

1 VIRGINIA:

2 IN THE COUNTY OF WASHINGTON

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7
8 April 21, 1998

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12 BOARD MEETING

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22 Reported by:
23 SONYA MICHELLE BROWN, Court Reporter
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25

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4 MASON BRENT: Good morning. My name is Mason Brent.
5 I'm a member of the Board. I represent the Oil and Gas
6 Industry. Today I'm filling in as Chairman for Benny Wampler
7 who could not be here. And before we get started, I will ask
8 my fellow Board members to introduce themselves, starting
9 with Max.

10 MAX LEWIS: Max Lewis, a public member from Buchanan
11 County.

12 SANDRA RIGGS: I'm Sandra Riggs with the Attorney
13 General's Office.

14 BILL HARRIS: I'm Bill Harris, a public member from
15 Wise County.

16 CLYDE KING: I'm Clyde King, a public member from
17 Washington County.

18 MASON BRENT: Thank you. I understand the first
19 item on our agenda, docket number VGOB -98-03/24-0641 has
20 been continued. So, we'll move on to the next item on our
21 agenda. The Virginia Gas and Oil Board will consider a
22 "Notice of Recommendation for Civil Charge" in the matter of
23 Cabot Oil and Gas Corporation. This is docket number VGOB-
24 98-04/21/-0647, and I'd ask the interested parties to come

1 forward and address the Board. Please introduce yourselves.

2 TOM FULMER: You want me to start?

3 ELIZABETH McCLANAHAN: Sure.

4 TOM FULMER: Tom Fulmer, Director of the Division of
5 Gas and Oil and with me is Mr. Gary Eide, area inspector for
6 the Division of Gas and Oil.

7 ELIZABETH McCLANAHAN: Elizabeth McClanahan with
8 Penn, Stuart & Eskridge representing Cabot Oil and Gas
9 Corporation and with me is our drilling foreman, Bill Wright,
10 and resident engineer, Doug Gosnell.

11 TOM FULMER: Mr. Chairman, I have a handout in
12 regards to the Civil Charge Procedural Rule adopted by the
13 Board for this matter.

14 MASON BRENT: Shall we go ahead and swear anyone who
15 is going to testify before the Board?

16 (All witnesses are sworn.)

17 TOM FULMER: Mr. Chairman, I bring before you today
18 a recommendation for a civil charge based upon the Civil
19 Charge Procedure Rule adopted by the Board in May of '92.
20 This matter concerns a...an access road in regards to a
21 permit application in operation conducted by Cabot Oil and
22 Gas in Tazewell County. Let me see, what did I do
23 with...well, did I give that out to somebody...I was looking
24

1 for my copy of the...did I give that out to anybody?

2 GARY EIDE: Copy of what?

3 TOM FULMER: The order that I issued. Anyhow.

4 Sorry, Mr. Chairman. I'm hunting for my order that I issued
5 and I don't know if I've given it out. I had it here a few
6 minutes ago. There we go.

7 MASON BRENT: Okay.

8 TOM FULMER: Subsequent to a violation issued in
9 regards to the non-compliance...or non-compliance of the
10 standards of erosion and sediment control for an operation
11 named as COGC #14 as permit number 3280, and for our records,
12 file number 280046. Violations were issued on this
13 particular operation in regards to, again, non-compliance of
14 soil and erosions standards of the law and regulations. This
15 NOV was not appealed as required under regulation 1.18,
16 Notices of Violation, within the specified time and the e...
17 subsequent of the NOV, a few days later, this matter
18 required the issue of a closure order on this particular
19 site.

20 I've handed out to the Board copies of the
21 Civil...Civil Penalty Procedure Rule in which it describes
22 and prescribes the matter in which we should...we should
23 assess civil penalties and what we should take under

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1 consideration. These were done and a subsequent order was
2 issued in regards to this on March 2, 1998, and I'm bringing
3 it before the Board. The Civil Penalty Procedure Rule...I
4 have also, in that Civil Penalty Procedure, highlighted the
5 section in regards to the procedures at this moment and time
6 and before the Board and what the Board is to consider in
7 regards to this. As far as the determination that the
8 Department has found, or the Division has made, is on page
9 two of the order.

10 The first point that we must consider is the
11 seriousness point determination and this involves
12 significant...whether the violation required or caused
13 significant offsite impacts as occurred well beyond the
14 permitted site, the continuation of the permit activities
15 would greatly increase the potential of further offsite
16 impacts. The continued of tracking of mud onto the state
17 highway would cause potential risk of hazard to public
18 safety. According to the procedure rule, we...we recommended
19 a point standard of six.

20 Under the degree of negligence, which is the next
21 category, we determined a gross negligence is found based on
22 the permittee...representatives of the permittee were aware
23 of the site impacts when we issued the notice of violation on
24

1 February 13, 1998. The permittee continued operations
2 without fully abating the original violation. The
3 permittee's action continued to create offsite impacts and
4 hazards safety circumstances up until the issuance of the
5 closure order on February 19, 1998, one day after which the
6 violation was to be abated. We assigned a negligence points
7 of four in that regard.

8 As to good faith credit, the violation was not
9 abated before the abatement time date. We assigned it as
10 zero because we felt like that he could not comply with that
11 abatement at that point in time any how because of the
12 seriousness resulting from that original permit...original
13 violation.

14 On the history of violations in this particular
15 situation, we don't have a history of violation in regards to
16 this non-compliance of standards with Cabot Oil and Gas. So,
17 we made a determination to reduce the base civil charge with
18 ten percent.

19 So, that leaves us with a total point assignment of
20 ten, based upon the Procedural Rule, again, the latter part
21 in the recommended civil penalty assessment. So, the base
22 civil charge amount would be twenty-seven hundred dollars
23 (\$2,700). The history of violations applied would be minus
24

1 ten percent of the base, which would be two seventy (270) and
2 the total amount would be recommended was two thousand four
3 hundred and thirty (2,430).

4 CLYDE KING: What was that figure, Tom?

5 MAX LEWIS: Two thousand four hundred and thirty
6 (2,430).

7 TOM FULMER: Sir?

8 CLYDE KING: How much was that figure?

9 TOM FULMER: Two thousand four---.

10 MAX LEWIS: And thirty.

11 TOM FULMER: ---and thirty dollars (\$2,430).

12 MASON BRENT: Did you have anything else?

13 TOM FULMER: Not at this time.

14 MASON BRENT: Any questions from Mr. Fulmer from the
15 Board?

16 MAX LEWIS: Have they had any violations of this
17 type before? You said...I believe you said they hadn't,
18 didn't you?

19 TOM FULMER: Not of this type.

20 MAX LEWIS: Yeah.

21 MASON BRENT: Any other questions?

22 (No audible response.)

23 MASON BRENT: Miss McClanahan.

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1 ELIZABETH McCLANAHAN: Mr. Chairman, I have no
2 questions of the inspector. I do have evidence that we would
3 like to present.

4 MASON BRENT: Proceed.

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6 ELIZABETH McCLANAHAN: Okay. In this particular
7 case, Cabot's position would simply be that as you heard the
8 inspector indicate, the closure order was issued by the Gas
9 and Oil Inspector's Office because they thought to abate the
10 violation at that particular time would actually cause
11 additional damage at that particular site. And if you look
12 at the dates on which the work was being done at this site,
13 you will realize from the daily well logs, which will be
14 introduced by Mr. Bill Wright who is the drilling...who was
15 the drilling foreman at the time, on the 27th of January was
16 the date this well was spudded. Unfortunately, it was the
17 same date that the good Lord decided to dump several
18 inches...actually several feet of snow upon us. That
19 evening, the weather conditions were so poor in fact, that
20 men who were working on this particular well site actually
21 had to spend the night in the woods at the well site because
22 they could not leave that particular well. What then
23 happened was at the time, and you'll see from the

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1 climatological data that we've given you, which is actually
2 climatological data that was taken at Richlands, because
3 that's the point where this data is gathered in Tazewell
4 County, which is at an elevation of about a thousand feet
5 lower than the actual well site that we're discussing here.
6 You'll see that the weather conditions continued to worsen
7 during the entire time that this well was being worked on.
8 From...in fact, on February 13th you'll see, which was the
9 date the notice of violation was entered, precipitation
10 continued on that day. The temperatures were above freezing
11 for most of the five days within which we had to abate the
12 violation. So, the snow continued to melt during that time.
13 At the same time, we continued to have more precipitation.
14 Every day of the five days you'll see from February 13th to
15 February 18th, which was the five days we had to abate the
16 violation, it continued to rain with one exception,
17 Valentine's Day, it did not rain of those particular five
18 days.

19 It's simply a situation where Cabot was doing
20 everything that it could possibly do under the extreme
21 weather conditions that it faced. The timing was obviously
22 problematic as a result of the spud date and then
23 hydrochloric acid was also put into the pipe and of course
24

1 the hydrochloric acid can only stay in the pipe for a certain
2 number of days without causing damage. So, Cabot had to have
3 the trucks towed into the site to actually treat the well and
4 perf it. So, as a result of these particular actions that
5 had to be taken, the road continued to get worse instead of
6 better just because it continued to rain.

7 So, we are simply taking the position that, due to
8 these exceptional factors that were present over which we
9 obviously had absolutely no control, that we're asking the
10 Board to waive the Civil Penalty assessment as a result of
11 the weather.

12 The first witness I would like to call is Bill
13 Wright, who is the drilling foreman on site and I have an
14 exhibit here which shows you the well history on this
15 particular well starting with January 28th of 1998. If I may
16 approach the Chairman?

17 MASON BRENT: Please.

18 (Ms. McClanahan gives Board members copies of
19 the exhibit.)

20 TOM FULMER: Mr. Chairman.

21 MASON BRENT: Yes, sir, Mr. Fulmer.

22 TOM FULMER: I'd like to object to this. If it's to
23 the NOV, I don't see what relevance this has.

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1 ELIZABETH McCLANAHAN: Mr. Chairman, the rules are
2 clear that we may, under the negligence section, present
3 evidence with regard to exceptional factors that may have
4 been present, and if you'll look at the definition of
5 negligence, we have been charged with gross negligence and
6 that particular definition is that gross negligence means
7 "reckless or intentional conduct". And our evidence is being
8 presented to convince the Board that we were not guilty of
9 reckless or intentional conduct on this particular site
10 because, in fact, the weather conditions during this time
11 period were ex...very extreme.

12 MASON BRENT: I agree with that. I'm going to deny
13 objection.

14

15 BILL WRIGHT
16 having been duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 QUESTIONS BY MISS McCLANAHAN:

20 Q. Okay. Mr. Wright, would you please state
21 your full name for the record?

22 A. Bill Wright.

23 Q. And what is your position with Cabot?

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1 A. I'm a drilling foreman.

2 Q. And how long have you been employed by Cabot

3 Oil and Gas?

4 A. Will be twenty-two years this first of May.

5 Q. And during the twenty-two years that you've

6 worked for Cabot, what has been your work experience

7 background?

8 A. Some of it has been in the production

9 department, but for the most part I've been a drilling

10 foreman, supervising drilling operations.

11 Q. And what have been...could you explain to

12 the Board your duties in connection with this particular CGOC

13 14 well that's located in Tazewell County?

14 A. Do you want a general description of my---?

15 Q. Yes.

16 A. My good general description would be that I

17 sometimes go out with the surveyors and help locate the

18 location sites to be built; supervision of the actual

19 building of the locations. I'm in on moving the contractors

20 in for the general, part of it; the perforate, bond perf

21 stipulation par frac in the well. I'm also there on some of

22 the reclamation part of it to meet environmental standards.

23 And that is my general description of what I do, yes.

24

1 Q. Okay. Mr. Wright, the well history the three
2 pages that I've submitted to the...I've presented to the Gas
3 and Oil Board, can you explain what this well history
4 includes, what information that includes?

5 A. I don't know if I understand the---.

6 Q. Well, generally what...how is the well
7 history compiled by Cabot Oil and Gas?

8 A. Just on daily activity sheets which we fill
9 out and send in on a daily basis.

10 Q. Okay. So, if...were you the foreman at this
11 particular CGOC 14 well site?

12 A. Not through its entirety, but I was there
13 on...at the time of this spud date, which was January 27th.

14 Q. Okay.

15 A. I was there at the time of the big snow fall
16 where we were.

17 Q. Right.

18 MISS McCLANAHAN: Okay. Mr. Chairman, I would
19 submit Mr. Wright as an expert witness in drilling operations
20 and production matters and also would submit this as Cabot's
21 Exhibit One.

22 Q. All right. Mr. Wright, can you just explain
23 to the Board...you have indicated that you were there on
24

1 January 27th, which was the spud date for this particular
2 well, can you please explain to the Board essentially what
3 happened on that date and then what happened from that date
4 through the present date?

5 A. Well, we moved in and spudded the well on
6 the 27th of January. We had the big snow fall. We had
7 already hit a total depth of the well. We had made the hole.
8 So, therefore, pretty much committed to go ahead to run our
9 eight and five-eighths inch casing. So, we were down for
10 three days...four days and then on January 31st we ran our
11 eight and five inch...five-eighths inch casing and cemented it
12 in the ground and at that point, I was relieved of duties at
13 that time because we were doing work...a schedule of ten days
14 on and three days off to give us, you know, a little break
15 from action hours. So, at that point in time, I was relieved
16 of...temporary relieved. There was another drilling foreman
17 that came on that point in time.

18 Q. And you have...at the point in time that you
19 came back on to this well site as the drilling foreman, you
20 actually reviewed the drilling foreman's daily logs during
21 those days, is that correct?

22 A. Yes, to pick up operation for that well.

23 Q. So, you will be able to continue to manage
24

1 the well site?

2 A. Yes.

3 Q. Can you just explain the snow conditions
4 during the time that this well was being spudded and drilled
5 and the conditions that the men were working under?

6 A. Okay. At that point in time, I think this
7 was on the 18th or 19th, the first day back from days off, I
8 had met with that point in time with Gary Eide. And we went
9 out and looked at the location at that point in time. So, at
10 that point in time, the conditions were bad. The sides of
11 the road were essentially diked by snow where it had been
12 shoved to the side of the road with the dozer and which kept
13 the runoff of any water into the road. Now, there was places
14 the conditions were bad. Of course, they, and I say Cabot
15 Oil and Gas, had put sediment barriers at the time. It
16 looked like they had made an effort to contain sediment and
17 runoff, which the water was so severe that it couldn't
18 contain everything that was there on the runoff.

19 Q. And so on February 19th, is that the date
20 that you actually met with Mr. Eide at the site and he issued
21 the closure order?

22 A. I think it was the 19th, yes.

23 GARY EIDE: Yeah.

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1 A. It was the 19th.

2 Q. And can you explain your view of the weather
3 conditions at that particular time?

4 A. The weather conditions at that time...I
5 can't remember whether it was raining that day or not. I
6 think it was somewhat. Maybe it wasn't, but we had
7 definitely had a bunch of water. I mean, the ground was just
8 totally saturated and every place...all the ditch lines, the
9 hillside had water coming out of them where the ground was so
10 saturated with water.

11 MISS McCLANAHAN: Okay. Those are all of the
12 questions I have for Mr. Wright.

13 MASON BRENT: Mr. Fulmer, do you have any questions?

14 TOM FULMER: I do have just a few questions.

15

16 CROSS EXAMINATION

17 QUESTIONS BY MR. FULMER:

18 Q. Mr. Wright, you were not there on the
19 February 13th?

20 A. No, I wasn't.

21 Q. Okay. That was the date of the NOV
22 issue...the original NOV issued.

23 A. (Witness indicated in the affirmative.)

24

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1 Q. Okay. You were there on the 18th when the
2 closure order was issued?

3 A. On the 18th...the 19th?

4 GARY EIDE: It's the 19th.

5 Q. 19th, okay.

6 MAX LEWIS: 19th.

7 A. Yes, I was.

8 Q. And were you aware, or have knowledge, that
9 operations continued from the 13th through the 19th?

10 A. No, that was my first day back. So, I was
11 aware just by conversation with my relief, Steve Wallbrown,
12 that the location was bad. I didn't know the complete
13 severity of what we was up against. No, I didn't know that
14 the road was that bad.

15 TOM FULMER: That's all the questions I have.

16 MASON BRENT: Any questions from the Board?

17 (No audible response.)

18 MASON BRENT: Proceed.

19 MISS McCLANAHAN: I like to call Doug Gosnell.

20

21 DOUG GOSNELL

22 having been duly sworn, was examined and testified as
23 follows:

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1 DIRECT EXAMINATION

2 QUESTIONS BY MISS McCLANAHAN:

3 Q. Mr. Gosnell, will you state your full name
4 for the record, please?

5 A. Douglas Gosnell.

6 Q. And your occupation and title?

7 A. I'm a petroleum engineer and a senior
8 drilling engine with Cabot Oil and Gas.

9 Q. And what are your duties as senior drilling
10 engineer for Cabot Oil and Gas?

11 A. My duties involve coordinating the drilling
12 and completion activities for the planned drilling program
13 within Cabot Oil and Gas; supervising the drilling foremen;
14 and working with them and contractors to accomplish the
15 company goals.

16 Q. And can you explain your educational
17 background?

18 A. I've got a Bachelors in Agriculture, a
19 Bachelors in Petroleum Engineering, a Masters in Petroleum
20 Engineering and P.E. Registration in the State of West
21 Virginia.

22 Q. And all of these degrees were obtained at
23 West Virginia University?

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1 A. Yes.

2 Q. And do you...the license that you hold is a
3 Professional Engineering License from the State of West
4 Virginia, is that correct?

5 A. Yes.

6 MISS McCLANAHAN: And Mr. Chairman, I would submit
7 Mr. Gosnell as an expert witness in matters of professional
8 engineering.

9 MASON BRENT: Okay. He's accepted.

10 Q. Mr. Gosnell, have you visited the site of
11 the COGC 14 well in Tazewell County, Virginia?

12 A. Yes, I've been there three times. The first
13 time was March 5th. I met Gary Eide and we drove in a
14 portion of the way and then we walked another portion of the
15 way and reviewed the situation and discussed what could be
16 done and what we needed to do at the time. I subsequently
17 visited the location again on April 7th to witness what
18 reclamation and work had been done on the leased road and
19 location to correct the situations and just recently, April
20 17th, I again visited the site to inspect it and see how it
21 stood at the time.

22 MASON BRENT: Could you tell me the first date again
23 that you visited...the date of your visit?

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1 A. March 5th.

2 MASON BRENT: March 5th.

3 Q. And Mr. Gosnell, can you explain the
4 climatological observations for Richlands, Virginia that
5 we've submitted to the Gas and Oil Board and how, in your
6 opinion, you believe those conditions affected your ability
7 to abate the violation prior to the closure order being
8 issued?

9 A. According to this information there on the
10 first date, February 2nd, 1998, was the day that we were shut
11 down and then February 2nd, we begin drilling operations. At
12 the time there's a...the depth in there as indication of snow
13 fall that is existing on the ground. Richlands does not
14 record snow fall. All they do is record the amount that is
15 remaining on the ground. Subsequently, you can see there
16 under participation on inches beginning February 3rd, it
17 began raining. There was seventeen one-hundredths of an inch
18 on that day. Snow fall remained at five inches on the
19 ground. The subsequent day, there was nine-tenths of an
20 inch of rain. The maximum temperature was only thirty-nine
21 degrees. The minimum was thirty-four degrees, and then in
22 the same time maybe, I have nearly an inch rainfall. They
23 lost two inches of snow pack at the time. So, it's readily

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1 apparent from this information that there was not enough
2 freezing weather or significant cold weather to bind...to
3 bound that water and with the snow melting and additional
4 rainfall, it was really more than the lease road would
5 handle. So, it was...it was a situation that was very dire
6 to try to mitigate.

7 Q. In your discussions on March 5th, 1998, the
8 closure order had been issued a number of days before that on
9 February 19th and in your discussions with the inspector on
10 March 5th, did the inspector indicate that it was too early
11 to actually go back on the site as a result of the conditions
12 at the site at that particular time?

13 A. Yes, Gary and I discussed that the road was
14 just still too wet...everything was too wet. There
15 was...wasn't sufficient drying to allow passage of vehicles
16 without causing any increased damage. So, we decided at the
17 time that it would not be prudent to open it back up.

18 Q. And so the soonest Cabot Oil and Gas was
19 able to get back on the site was March 27th, is that correct?

20 A. At that date, yes, Gary opened up...gave us
21 permission to bring out the service rig that was in there and
22 also the...I believe the water tanks that the contractor had
23 on location. And the following day I had the rig brought out

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1 and I believe the...I'm not sure whether the tanks came out
2 the following day or subsequent to that.

3 Q. So, essentially the weather conditions as
4 they are listed on this climatological observation sheet
5 prevented Cabot Oil and Gas from being on the site at all for
6 approximately five weeks, is that correct?

7 A. Yes, we...we shut down according to the
8 closure order and the rig itself sat out there for that
9 period of time. We reached an agreement with the contractor
10 to leave it out there because we couldn't physically move it
11 due to the closure order.

12 Q. And you became involved on this particular
13 site for what purpose?

14 A. As part of my responsibilities I assumed as
15 senior drilling engineer, locations and reclamation also
16 become part of my responsibilities and it's...it helps me to
17 be able to get out and see the problems that we do have,
18 understand what we can and can't do, and try to alleviate the
19 problems where they occur.

20 Q. Looking at the well history for this
21 particular well, can you explain to the Gas and Oil Board the
22 issues with regard to the date on which you put hydrochloric
23 acid into the pipe and the reason that had to be---?

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1 A. When the four and half casing was run, I
2 believe that was on the 7th...it's report date 2/8/98 on your
3 chronological history. The date the four and half casing was
4 run, it was cemented in the hole and by...once the cement was
5 pumped down the hole, it was followed by two hundred and
6 fifty gallons of fifteen percent acid. It's a common
7 practice to do that for completion activities later on. That
8 completion rig will come in there and we will need water line
9 service. The company will perforate the well and the acid
10 and allow it to clean up the perforation, and then at that
11 point, we will be bringing the...another service company to
12 hydraulically fracture of the well. Once we place that
13 hydrochloric acid in the pipe, we have approximately two
14 weeks to which...to pump that away. Otherwise, severe damage
15 can occur to the pipe. It...we pump in an inhibitor with the
16 acid, that's why we...it gives us approximately two...two
17 weeks of time to be able to wait until we get the other
18 equipment in there. But after that two weeks, that inhibitor
19 is no longer effective and can lead to severe damage to the
20 pipe and ultimately loss of the well. So, once that is done,
21 it sets a course of events in motion that we really have to
22 complete.

23 Q. Mr. Gosnell, have you taken pictures
24

1 recently that will show the abatement procedures that have
2 been taken by Cabot Oil and Gas since March 27th, 1998, when
3 you were allowed to go back onto the property?

4 A. Yes, on April 17th when I was last out there
5 I took pictures. I believe it was...was it May 5th when I was
6 out there with you, Gary, that you took some pictures and at
7 the time---?

8 GARY EIDE: I believe it was March 5th.

9 A. ---yeah, excuse me. March 5th. And I tried
10 to copy, or remember roughly, where he had taken as before
11 and take some additional pictures to see how things have
12 changed over the time.

13 ELIZABETH McCLANAHAN: Mr. Chairman, I would like to
14 submit the climatological observation data as Cabot's Exhibit
15 Two and these pictures. Perhaps it would be easiest to...just
16 to call one Exhibit Three, if that's acceptable to the Board.

17 A. How do you want me to do that?

18 ELIZABETH McCLANAHAN: Okay. How...would you like
19 for him to stand here in...maybe in front of you to explain
20 the pictures that he had taken or---?

21 TOM FULMER: Mr. Chairman, I would like to know what
22 the relevance is.

23 ELIZABETH McCLANAHAN: The relevance of these
24

1 pictures is the...again, the mitigating circumstances of the
2 weather at the time of March 5th when the closure order was
3 entered and how the weather cond---

4 TOM FULMER: The closure order was entered in
5 February.

6 SANDRA RIGGS: February 18th.

7 ELIZABETH McCLANAHAN: No, the closure order was in
8 effect on March 5th of 1998 and therefore, we could not get
9 back on the site during that time period. It was entered
10 February 19th and stayed in effect until March the 27th,
11 1998.

12 TOM FULMER: I'd still like to know what the
13 relevance is.

14 MASON BRENT: What...what are you trying to
15 demonstrate, Elizabeth?

16 ELIZABETH McCLANAHAN: We're trying to demonstrate
17 the good faith effort of the operator to abate the violation
18 upon the issuance.

19 TOM FULMER: Mr. Chairman, I'm not...I'm not
20 questioning good faith of them trying to abate the closure
21 order of the NOV. I'm not questioning that fact.

22 SANDRA RIGGS: There were no points assigned or
23 assessed for a lack of good faith in this assessment, is that
24

1 correct?

2 TOM FULMER: Right.

3 ELIZABETH McCLANAHAN: No, but you...points can be
4 assigned for a good faith credit thereby reducing the points
5 that were given for seriousness and the issue of seriousness.
6 We have been given six points which indicates significant
7 actual or potential damage correctable only after substantial
8 effort and time. And so, we believe that these pictures are
9 relevant to that seriousness and the good faith credit that
10 can be applied to those particular points. We certainly
11 accept the stipulation by the Gas and Oil inspector's office
12 that we have appropriately abated the violation.

13 SANDRA RIGGS: We're looking at Section six of the
14 rule on good faith points. It says, "The inspector may award
15 good faith points when an operator complied with the remedial
16 action required by the NOV or CO prior to the date set for
17 abatement." What was the abatement date that we're talking
18 about here and that sets the time period you're talking
19 about?

20 ELIZABETH McCLANAHAN: It also says, "If measures
21 were taken to abate the violation in the shortest time
22 possible," under table three of the good faith credit
23 determination.

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1 TOM FULMER: The abatement was to be done by the
2 18th.

3 MASON BRENT: By the 18th?

4 TOM FULMER: Of February.

5 MASON BRENT: February?

6 GARY EIDE: That was the NOV.

7 TOM FULMER: That was the NOV.

8 BILL HARRIS: Mr. Chairman, just a quick question.
9 Is that normal for a five day...abatement in five days, is
10 that normal?

11 TOM FULMER: In the seriousness...considering the
12 seriousness of the violation, yes. It was an immediate
13 abatement that should have occurred....well, I'll let her
14 continue on.

15 ELIZABETH McCLANAHAN: It's interesting...it's
16 interesting to note too, that within those five days, two
17 days were Saturday and Sunday of the five day abatement
18 period. But even at the end of the abatement period, the
19 inspector himself issued the closure order because he
20 determined that no one should go back on the property. So,
21 the decision was made at the particular that the...despite
22 efforts that had been made by Cabot during...you'll notice
23 from the report that was written by the inspector, that Cabot
24

1 did, during this five day period, increase sediment barriers.
2 That's listed in the report that was made on February 19th,
3 I believe. The inspector indicates that Cabot was working
4 during that time period to actually increase sediment
5 barriers and had done so, but that they had not taken effect
6 as a result of the additional rainfall that had been...that
7 had come during that five day period as well. On the...it's
8 actually Mr. Eide's report of February 19th, '98...in Mr.
9 Eide's cover letter of February 20th, he indicates that, "Any
10 efforts to correct the problems now or travel the road will
11 only contribute to the offsite environmental impacts." Then
12 on the actual inspection report, Mr. Eide indicates that,
13 "The sediment control which operator did establish is not
14 adequate to handle the sediment which has eroded off the road
15 and continues to erode off the road. In certain areas, the
16 operator tried to stabilize some of the sediment, but these
17 efforts have not been satisfactory. The operator did surface
18 the road, but mud has coated the gravel and the tracking of
19 mud onto the state highway is still a problem." So, it
20 wasn't as though Cabot just continued to operate without
21 trying to abate the violation in exactly the way the
22 inspector had suggested. The problem was the snow was
23 melting so fast, we were getting additional participation and

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1 there was no...there were no temperatures below freezing that
2 it was just absolutely impossible to do that and even the
3 inspector thought on February 19th, that all operations on
4 that project should shut down and in fact, kept all
5 operations shut down until March 27th and, of course, as Mr.
6 Gosnell has indicated, Cabot went back onto the property the
7 very next day to abate the violation and did so.

8 SANDRA RIGGS: So, the issue with the pictures is
9 whether or not on page six of the rule under the good faith
10 credit determination, Cabot should be given credits either
11 under one to two or three to four for the efforts they took
12 during the CO period, is that---?

13 ELIZABETH McCLANAHAN: And whether the serious point
14 determination should be less under rule four.

15 SANDRA RIGGS: Well, if you got credits, that would
16 reduce the points which would then in turn reduce the...is
17 that what you're saying?

18 ELIZABETH McCLANAHAN: Right.

19 SANDRA RIGGS: Are you focused now on the good faith
20 determination, is that what we're looking at?

21 ELIZABETH McCLANAHAN: Well, I think there are two
22 aspects of this. One is the good faith credit determination
23 and then two is the seriousness of the violation under rule

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1 four, table one. So, certainly, if good faith points were
2 given, then the total points would be reduced. In addition
3 to that, the seriousness points that were assessed could have
4 been---.

5 SANDRA RIGGS: You're saying it was not as serious
6 as they have shown here and that because of the efforts Cabot
7 took they should assign some credits for good faith?

8 ELIZABETH McCLANAHAN: Correct.

9 SANDRA RIGGS: Okay. So, there's two...two tables
10 to look at, table one for seriousness and table three for
11 good faith?

12 ELIZABETH McCLANAHAN: Yes.

13 SANDRA RIGGS: Does that help with issue? Does
14 anybody have any questions with what you're looking at?

15 CLYDE KING: Where are you?

16 BILL HARRIS: Yeah.

17 CLYDE KING: Right here.

18 SANDRA RIGGS: Table..., the inspector has
19 recommended table six which would put you in this category,
20 and they're saying that it should fall to a lesser one here,
21 and then you get to table four, the inspector gave no credit
22 and they're saying they should get credit. So, those are the
23 rules that you're looking at. Okay.

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1 CLYDE KING: Table four.

2 SANDRA RIGGS: I think that helps them.

3 ELIZABETH McCLANAHAN: Okay. Thank you. May Mr.

4 Gosnell now explain to you the actions that were taken?

5 MASON BRENT: Yes, let's go ahead and do that right

6 now.

7 ELIZABETH McCLANAHAN: Okay.

8 CLYDE KING: So, you're saying you should be...on

9 total three instead zero one to two.

10 TOM FULMER: Now, Mr. Chairman, I want to know which

11 one of we're debating here because there's three different

12 charges here and she's picked up on only the good faith, but

13 she's mixed it in with seriousness. If we are going to argue

14 seriousness, then we've got...we're going to have to argue

15 them separately.

16 SANDRA RIGGS: Right. There's two...as I

17 understood, there's two separate issues on the table one,

18 whether or not the seriousness of the event warranted the

19 six, issue number one; the second issue is whether or not

20 their abatement efforts should have entitled them to some

21 credits. So, those---.

22 ELIZABETH McCLANAHAN: But that...but that is with

23 regard to these pictures. Now, with regard to negligence,

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1 obviously all of our previous testimony in this hearing, we
2 are...we would argue that under rule five, table two, this
3 was...this resulted from no negligence of the operator
4 because it was essentially an act of God over which we had no
5 control. But---.

6 SANDRA RIGGS: That's table two at the top?

7 ELIZABETH McCLANAHAN: That's correct.

8 TOM FULMER: I would...is...are you through with
9 your witnesses as far as negligence?

10 SANDRA RIGGS: No, I think we're still at the
11 pictures. We're just trying to get focused on where the
12 challenge is.

13 TOM FULMER: Well, I'm not...I'm not...but the
14 problem is that I see is arguing the points all mixed up
15 because they're different arguments assigned to each one.

16 SANDRA RIGGS: Right.

17 TOM FULMER: And I'm not...I don't know right now
18 where counsel is going with her argument, because she started
19 out with negligence and now we're in good faith.

20 MASON BRENT: Well, we'll do our best to keep
21 the...to keep the issues separate. I'd like to let her go
22 ahead and proceed and I'm assuming this along the line of the
23 good faith credit determination which you...with regard to

24

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1 these pictures.

2 ELIZABETH McCLANAHAN: Yes, yes, Mr. Chairman.

3 CLYDE KING: Do we not need to look at the

4 seriousness and then look at the---?

5 SANDRA RIGGS: I think we..you go into your

6 deliberation...you're going to have to, after having heard

7 the evidence, go through these charts step by step---.

8 CLYDE KING: And then mayb---

9 SANDRA RIGGS: ---and decide, based on what you've

10 heard, review the inspector's recommendation and compare it

11 to what you've heard and make a determination.

12 CLYDE KING: Whether they deserve some good faith?

13 SANDRA RIGGS: Chart...chart by chart on a table by

14 table.

15 CLYDE KING: Okay.

16 MASON BRENT: Okay. Proceed if you will.

17 ELIZABETH McCLANAHAN: Okay. And to make this clear

18 with regard to negligence, we're indicating that there are

19 mitigating factors which resulted in us not being able to

20 comply any sooner, and that was the weather, and all of that

21 evidence has been presented to you. This evidence is with

22 regard to the seriousness and the good faith credit

23 determination.

24

1 TOM FULMER: Mr. Chairman, again, if she's going to
2 argue negligence, and then change to good faith right in the
3 middle of her testimony, we're changing subject matter.
4 ELIZABETH McCLANAHAN: All right. Mr. Gosnell will
5 explain to you what has happened on these particular sites.
6 I guess the best...is it okay if he just stands at the end of
7 the table here so that everybody can see and then pass the
8 pictures?
9 MASON BRENT: I think so.
10 TOM FULMER: Again, Mr. Chairman---.
11 ELIZABETH McCLANAHAN: Okay.
12 TOM FULMER: ---there was testimony given on
13 negligence by Mr. Gosnell.
14 MASON BRENT: Right.
15 TOM FULMER: Now, she's switching to good faith. I
16 haven't had a chance to cross examine him on the negligence
17 issue.
18 MASON BRENT: Would you like to back up and do that
19 before we observe this?
20 TOM FULMER: Yes, I would.
21 MASON BRENT: All right.
22 ELIZABETH McCLANAHAN: Mr. Chairman, I have no
23 problem with how the cross examination is done. But the
24

1 appropriate way for administrative hearings to be handled is
2 that we're able to put on our testimony...all of our
3 testimony by each witness and then the cross examination
4 continues. You don't interrupt---.

5 MASON BRENT: Okay.

6 ELIZABETH McCLANAHAN: ---the presentation of the
7 of the testimony under the administrative law rules.

8 TOM FULMER: That's fine with me, Mr. Chairman.

9 MASON BRENT: Okay. Let's hold on, Mr. Fulmer.

10 TOM FULMER: I just want to reserve that factor.

11 MASON BRENT: Okay. So noted.

12 DOUG GOSNELL: When I arrived there on the 17th, I
13 took some pictures. There was...this was the day severe
14 rains.. the night before, there was some flash flood watches
15 in the area and all and it goes to show that even with all
16 that extra water, that the road location did a good job of
17 handling it. This is an interesting one. Right there, the
18 water's actually coming out of the hillside and there's not
19 even a drainage or anything coming off the hill. It's just
20 coming right out of the actual hillside. These are some
21 eight by tens. This was an area that was impacted
22 that...that was a picture that Gary took and I believe that
23 is the same... looking at roughly the same area.

24

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1 MAX LEWIS: I believe you got two pictures here.

2 DOUG GOSNELL: Yeah, they're two of the same.

3 MAX LEWIS: Both same.

4 DOUG GOSNELL: Yeah.

5 CLYDE KING: Are these pictures taken at the drill
6 site?

7 DOUG GOSNELL: These are on the lease road on the
8 way to the drill site.

9 CLYDE KING: How far away from the drill site?

10 DOUG GOSNELL: They vary anywhere from probably a
11 mile up to a half a mile away.

12 ELIZABETH McCLANAHAN: Mr. King, the issue under
13 notice of violation of their closure order is with regard to
14 the road. So, that's why these pictures are of the road
15 because the road was the problem as opposed to the drill
16 site.

17 DOUG GOSNELL: This picture right here, they are of
18 the same area taken a hundred and eighty degrees apart as the
19 road came around a natural drainage area that was where it
20 was flowing off and it's looking at the same locations---.

21 MAX LEWIS: You don't have any pictures of the road
22 here.

23 DOUG GOSNELL: Well, I have some coming up here.

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1 Here's an area that was...here's a...if you can take a look,
2 there's a sediment barrier at the end of that ditch line.
3 MAX LEWIS: Is there a drain right there under that?
4 It looks like it might be a---.
5 DOUG GOSNELL: Yes.
6 MAX LEWIS: It look like a small drain.
7 DOUG GOSNELL: That's just showing some of the
8 sediment barriers. That's from the base of the hill, looking
9 up towards the road.
10 MAX LEWIS: How far apart do you have the sediment
11 barriers on your road? I know you got one point here, the
12 same place here, but how far are they?
13 DOUG GOSNELL: They're---.
14 MAX LEWIS: All long the road or just in certain
15 places?
16 DOUG GOSNELL: Well, they're in about three major
17 locations where there was major draining areas coming off the
18 road. That just shows a drain pipe with a sock off the end
19 of it to reduce the amount of erosion on the end of the drain
20 pipe. Here's a section of lease road.
21 MAX LEWIS: When were these pictures taken?
22 DOUG GOSNELL: The 17th of this month.
23 MAX LEWIS: This month?

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1 DOUG GOSNELL: Yes.

2 MAX LEWIS: Do you have pictures that was taken at
3 the time that you got the citation?

4 DOUG GOSNELL: The Polaroids were taken during that
5 period of time when the---.

6 GARY EIDE: No, they weren't taken when it was
7 issued. They were taken after. If they were taken on the
8 5th...is that when those were taken?

9 DOUG GOSNELL: Yeah, yeah. They were taken the 5th.

10 GARY EIDE: Yeah, they were taken March 5th. We
11 have some.

12 DOUG GOSNELL: There's again the sediment barriers.

13 MAX LEWIS: Same ones.

14 DOUG GOSNELL: One thing I'd like to kind of point
15 out here is the---.

16 MAX LEWIS: I notice the redbuds was blooming on
17 that one.

18 DOUG GOSNELL: ---yeah, the slip along the upper
19 side of the road up there---.

20 MAX LEWIS: Yeah, yeah.

21 DOUG GOSNELL: ---and there was a lar...several
22 slips along there that came into to our ditch line and trying
23 to keep those deep lines clear was a major effort. And this
24

1 is just the entrance to the location road off the state road.

2 CLYDE KING: These were taken when?

3 DOUG GOSNELL: The 17th.

4 MAX LEWIS: This month.

5 CLYDE KING: Of April?

6 DOUG GOSNELL: Yes.

7 ELIZABETH McCLANAHAN: Mr. Chairman, that's all the
8 evidence we have to present from our witnesses.

9 MASON BRENT: Mr. Fulmer, any questions of the
10 witness?

11 TOM FULMER: Yes, sir. Yes, Mr. Chairman.

12

13 CROSS EXAMINATION

14 QUESTIONS BY MR. FULMER:

15 Q. Mr. Gosnell---?

16 A. Yes.

17 Q. ---were you present at the location on
18 February 13th?

19 A. No.

20 Q. Do you know Steve Wallbrown?

21 A. Yes, I do.

22 Q. Do you know Dan Grover...Grove?

23 A. Dan Grove, yes.

24

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1 Q. Yeah. Are they people associated with this?

2 A. Steve Wallbrown is in the same capacity as
3 Bill Wright. He's a drilling foreman. He does report to me.
4 Dan Grove is out of our Pittsburgh office and he reports
5 directly to my supervisor.

6 Q. Well, were you aware that on February 13th
7 that a violation had been issued?

8 A. I began employment with Cabot on February
9 9th, and during that interim, I was just becoming familiar
10 with the department. As far as the notice of violation,
11 Steve indicated to me that there was a possibility of one
12 being issued, but at the time I don't recall whether he said
13 one had been issued or whether he had just told me that there
14 was a likelihood of one being issued.

15 Q. Okay. At that time, Mr. Eide...well, the
16 NOV was issued on the 13th. Now looking at your well history
17 report that you have here...or daily logs reports, you have
18 listed that on the 14th, the day after the violation was
19 issued, there was concerns about the erosion and sediment
20 control. There was a water line rig brought in, there was a
21 frac valve brought in, there was logs ran, they was perfed
22 and even it's noted here, lease road in rough condition due
23 to rain and snow melting.

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1 A. The one thing this report...the report date
2 is 2/14. This is for the previous twenty-four hours. So,
3 this work occurred on the 13th and that was in conjunction of
4 perforating the well and in preparation of being able to pump
5 the acid out of the pipe.

6 Q. Okay. But anyhow, it occurred on the 13th,
7 there was travel on that road on the 13th at the time that
8 Mr. Eide had issued the NOV. You have two previous days
9 after that on the 15th and then 16th, you're talking about
10 there to...you wanting to move in a dowel well. It's not
11 clear whether or not the dowel well moved in that day or not,
12 but you have that. On the 17th...you note that on the 17th
13 which would have been on the 16th, I assume I'm correct on
14 that?

15 A. Pardon me, I didn't---?

16 Q. On 16...you have listed here in your log
17 that on the 17th you had the stimulation performed---?

18 A. Yes.

19 Q. ---but I assume it is the 16th?

20 A. That's correct.

21 Q. Okay. So, you had all these frac trucks
22 moving in on the 17th...I mean, 16th?

23 A. 16th, that's right.

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1 Q. I'm sorry. So, you had travel up and down
2 this road during that whole time period that this violation
3 was under issue and you were require to abate, I assume?

4 A. Yes, there was traffic. To my knowledge,
5 they were putting additional self fencing and straw bales,
6 that type of device to mitigate any---.

7 Q. Okay.

8 A. ---any problems.

9 Q. Now, on the 18th you state again that you've
10 moved in a well rig service. You're swabbing...swabbing back
11 into the pit on the 18th, which would be the 17th, actual
12 date.

13 A. Yes.

14 Q. And on the 19th in this report, again,
15 you're swabbing the well, which would have been the 18th.

16 A. Correct.

17 Q. Again, on the 20th, you're talking about
18 swabbing the well, again, which would have been the 19th.

19 A. Correct.

20 Q. Now, during this time period, you've got
21 travel up and down this road and on the 19th, it finally...
22 the road got so bad that a closure order was issued, is that
23 correct?

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1 A. Yes, as far as I know. Yes.

2 Q. Okay.

3 TOM FULMER: Mr. Chairman, that's basically all I
4 have for this witness as far as asking him questions. And
5 this is in regards to, and I want to go back to this since
6 Miss McClanahan is re...is addressing all of these issues at
7 one time. This goes back to the negligence issue, and it is
8 clearly within the negligence issue. The operator was well
9 aware of the conditions and whether or not he was a prudent
10 operator in moving equipment in and out on that road once he
11 knew that road was in terrible shape to begin with, which he
12 basically stated in his report that the road was bad. And,
13 again, it's in regards to the negligence issue and why those
14 points were assigned.

15 As to the good faith question, I have no argument
16 against the good faith. That would be entirely left up to
17 the Board's discretion. In our regards, at the time that
18 closure order was issued, or this order was issued for this,
19 the extent of the abatement was not clear, but they were
20 abating the issue. We are not...we're not arguing that
21 point.

22 As for the seriousness, again, I go back to the
23 negligence issue that the more movement during that time
24

1 period created a situation whereas it was causing more
2 serious conditions to exist and that's why those points were
3 assigned in that direction. Thank you, Mr. Chairman.

4 ELIZABETH McCLANAHAN: Mr. Chairman, in closing, I
5 would just like to point out the rules that the Board has
6 here that Mr. Fulmer has given to you, the Civil Charge
7 Procedural Rules. If you look at page four, Mr. Fulmer has
8 highlighted for you one paragraph on that page, or at least
9 my copy is highlighted, is yours also highlighted?

10 (No audible response.)

11 ELIZABETH McCLANAHAN: Okay. The next...if you look
12 at the next paragraph just below the one that Mr. Fulmer has
13 highlighted for you, that paragraph indicates that the Board
14 can actually waive a civil charge if exceptional factors were
15 present which would make the civil charge demonstrably
16 unjust. And we would argue first and foremost, that as a
17 result of the exceptional weather conditions which were
18 experienced between January 27th and February 19th, that
19 these were, in fact, exceptional factors which would allow
20 the Board to actually waive this civil charge altogether.
21 Alternatively, if the Board would not see fit to waive the
22 civil charge altogether, then we would request that the
23 seriousness and the negligence points be reduced and that

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1 good faith points actually be awarded.

2 During the time period of February 13th to February
3 19th, we have testified that, in fact, we were working on
4 this well and the reason for that was that the hydrochloric
5 acid was already in the pipe and had to be removed. In
6 addition to that, the inspector had not indicated that we
7 were not...a closure order had not been issued at that time.

8 A notice of violation was issued specifically asking us, as
9 he does in his documents, to do additional sediment control
10 and all of that had been happening. So, we were continuing
11 to do what the inspector had asked during that time period.
12 It's just that the weather conditions were so horrible that
13 it couldn't be controlled and in order to protect the well,
14 the hydrochloric acid had to be removed and as a result the
15 trucks had to be towed into the location.

16 And so, again, first and foremost, we would request
17 that the Board actually waive the violation in accordance
18 with rule eight; and second, if the Board does not see fit to
19 waive the violation, in the alternative, we would request
20 that the seriousness and negligence points be reduced and
21 that the good faith points be increased. And that's all that
22 we have, Mr. Chairman.

23 TOM FULMER: And I think, Mr. Chairman, in regards
24

1 to Cabot's waivering, or asking in regards to waiver, I know
2 that it's not a good time to put on the evidence, but since
3 we've got to this point, we have not seen, or the Board has
4 not seen, the result of this situation and---.

5 ELIZABETH McCLANAHAN: Mr. Chairman, I---.

6 SANDRA RIGGS: It's in form of rebuttal, is that
7 what you're saying?

8 TOM FULMER: Yes...yes

9 ELIZABETH McCLANAHAN: He...the case has rested and
10 this---.

11 SANDRA RIGGS: I didn't hear anybody rest.

12 ELIZABETH McCLANAHAN: Yes. He said he...those was
13 all the testimony---.

14 SANDRA RIGGS: That he had of this witness is what
15 he said.

16 ELIZABETH McCLANAHAN: Oh, okay. All right. I
17 object.

18 MASON BRENT: Overruled.

19 TOM FULMER: In regards to their case of waiver, I
20 would like to show you some pictures, and this was done on
21 the 19th, or actually it was done on the 26th, and I do have
22 pictures on the 19th if the Board...as a result of continued
23 activity on the road.

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1 MASON BRENT: Mr. Fulmer, would you characterize for
2 me, any communication that there may have been between your
3 office and Cabot from the date of the notice of violation,
4 the 13th to the 19th, the closure order. What, if any---?

5 TOM FULMER: I would have to refer it to Mr. Eide,
6 since Mr. Eide is the inspector and he had direct knowledge
7 of the conversations.

8 GARY EIDE: All right. The day...the day the NOV
9 was issued, there was conversations with Cabot's supervisor
10 on the site. Later that day, there was communications with
11 Mr. Dan Grove in their Pittsburgh office concerning the road.
12 I had a conversation Saturday morning with Cabot personnel
13 who explained to me that the road was...there was some slides
14 on the road and he was wanting to know what to do, and then
15 after that, I met with Bill Wright Thursday and we reviewed
16 the road again.

17 When I first issued the NOV, I didn't review the
18 entire road. I went to the site to see if any mud was being
19 tracked on the road because I knew they were going to be in
20 there preparing the well to be fraced. I had an appointment
21 that morning somewhere else. So, I just went and saw the
22 beginning of the road and based on what I saw in just that
23 small section of the road, I issued the NOV and I told the

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1 site supervisor what he needed to do at that point and then I
2 called Pittsburgh that evening and explained to them, too,
3 what the situation was as I saw it.

4 ELIZABETH McCLANAHAN: Mr. Chairman, please
5 understand that we are not making any case for suggesting
6 that this was not a situation that needed to be corrected and
7 abated. We completely agree that there's no question that
8 needed to be done. Our only...our only plea to the Board is
9 that the weather conditions were so extreme and so
10 exceptional that it was difficult for us to do that during a
11 five day period in which the violation was issued. That's
12 the only...I mean, we're absolutely not contesting any of Mr.
13 Eide's testimony or Mr. Fulmer's testimony whatsoever.

14 MASON BRENT: I understand that. I'm just trying to
15 get a feel for how much, if any, cooperation was taking place
16 from the NO...date of the NOV---.

17 ELIZABETH McCLANAHAN: Right.

18 MASON BRENT: ---to take care of what's critical for
19 you and also abate the problem.

20 ELIZABETH McCLANAHAN: Right. And it's my
21 understanding...I mean, there are a number of people
22 obviously who were involved. In fact, several different
23 people received letters from Mr. Eide, I'm sure, depending on
24

1 who he could get in touch with or whatever, and so there's no
2 question that all of the individuals from Cabot were working
3 with Mr. Eide to do whatever could be done to abate the
4 situation and Cabot does not contest Mr. Eide's decisions to
5 issue the NOV at all. We simply are asking the Board to take
6 into account the exceptional circumstances that resulted from
7 the weather. That's absolutely the only point we make here
8 today.

9 MASON BRENT: Mr. Eide, during this period, the 13th
10 through the 19th, how would you characterize their posture of
11 cooperation?

12 GARY EIDE: I didn't have any problem in dealing
13 with Cabot during the time period when the NOV was issued and
14 the subsequent visits to the site with Cabot. The biggest
15 problem that I had, and the reason why it went to closure was
16 because I felt like the activity on the road was contributing
17 to the problem. But as far as their cooperation in trying to
18 address the problems, I didn't have any problems with their
19 efforts.

20 MASON BRENT: Was there any explanation offered to
21 you as to why they felt it necessary to continue this traffic
22 on the road during the---?

23 GARY EIDE: Well, what they told me is what you
24

1 heard today was the biggest problem was the acid was put into
2 the well. I felt like, with the weather being as it was at
3 the time, why do that? You know, the best thing to me would
4 have been to get out of there and stay off of it. So---.

5 BILL HARRIS: Mr. Chairman, let me---.

6 MASON BRENT: Mr. Harris.

7 BILL HARRIS: In your viewing of the site now, did
8 you go subsequent days after the 13th? Did you just say that
9 you were there---?

10 GARY EIDE: I went there on the 13th...that was the
11 date the NOV was issued---.

12 BILL HARRIS: NOV, okay.

13 GARY EIDE: ---then on the 19th I met with Mr.
14 Wright.

15 BILL HARRIS: Okay. But was it at that site as
16 well?

17 GARY EIDE: Right, yeah.

18 BILL HARRIS: Could you tell...was there any
19 evidence that the road had been worked on to try to help
20 prevent further deterioration or at least correct some of the
21 problems that had you seen on the 13th?

22 GARY EIDE: The operator had placed, as you saw in
23 these pictures and you've probably seen in the others, the

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1 operator did install quite amount of self fence and they
2 tried to mulch with hay. There wasn't any work done on the
3 road surface itself. The road was so wet and muddy there
4 wasn't anything you could do to it. We had to be pulled in
5 and pulled out.

6 BILL HARRIS: Oh, is that right?

7 GARY EIDE: Yeah.

8 BILL HARRIS: But there was evidence that there was
9 some type of control or---?

10 GARY EIDE: Right they put...they put self fence
11 down and they had mulched the sediment. Some of it had been
12 washed off just due to the heavy precipitation at the time.

13 MAX LEWIS: You said that was the 19th.

14 TOM FULMER: That was the 19th.

15 ELIZABETH McCLANAHAN: There's also a report in the
16 file dated February 17th...well, that's the date of the NOV,
17 but the reports that I referred to...the letter dated
18 February 20th, and then Mr. Eide's report on February 19th,
19 both indicate that Cabot had performed activity during that
20 time period, but it simply was not adequate in light of the
21 weather.

22 CLYDE KING: These pictures were taken the 26th.

23 TOM FULMER: 26th is right. It's much clearer today

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1 to see the better pictures.

2 MASON BRENT: Any other questions from the Board?

3 CLYDE KING: I have a question, Mr. Chairman. Is
4 the closure because of mud going onto the state highway, or
5 is it because of the slides and the inability to control the
6 erosion on the road to the site?

7 GARY EIDE: It was actually all of it. There was
8 mud being tracked on the road, but there was a substantial
9 amount of sediment that had washed off the road.

10 MASON BRENT: Any other questions from the Board?

11 (No audible response.)

12 MASON BRENT: Are you through?

13 TOM FULMER: Yeah, I'll just finish up. I don't
14 want to stress the Board out any more than what it is. I
15 think in our determination, we took a lot under consideration
16 and as far as the negligence goes...the seriousness and
17 looking at the seriousness, it did create a lot of offsite
18 impacts as the pictures would contest to. On the negligence
19 end, it is questionable whether the operator was very prudent
20 in his operation, knowingly knowing the road was
21 deteriorating at the time and whatever they were taking
22 abatement procedures during that time period between the date
23 of the NOV and the date of the closure order was not helping

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1 in the situation and it was still continuing and...so, under
2 the negligence, we determined it was gross negligence because
3 whether the prudent operator should have stopped operations.

4 In regards to their procedures that you received on
5 this, even though they went out and they continued to frac
6 and so forth, that nature, during that time period. As far
7 as good faith, we think Cabot took all possible situations
8 that it could take to abate the permit. We have no argument
9 with that...on that. Mr. Chairman, that's...that's basically
10 our position, that they might have been some decisions made
11 which might not have created or extended the situation that
12 existed on the 19th and that's...that's our position.

13 ELIZABETH McCLANAHAN: Just as a final note,
14 the...when Mr. Eide lifted the closure order, you'll notice
15 what he says is the road has dried enough to allow the
16 operator to begin working the road. And I think that really
17 tells the story of these exceptional circumstances that kept
18 the road so wet from February 19th till March 27th, that it
19 was just absolutely impossible under these exceptional
20 circumstances for Cabot to do anything about the situation
21 prior to that particular time and I think that's evidenced
22 from Mr. Eide's report. But please understand that our
23 argument is only weather, weather, weather.

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1 MASON BRENT: I'd like to ask the Board, if you
2 will, let's consider point by point here starting with the
3 seriousness of the impact and then a degree of negligence
4 involved and then if any good faith credit should be
5 considered.

6 CLYDE KING: I certainly agree, Mr. Chairman, and I
7 think we need to have an explanation as to the recommended
8 points and I'm trying to determine---.

9 SANDRA RIGGS: If you go to table one.

10 MASON BRENT: Table one on page five of the Civil
11 Charge Procedural Rule, go to page five.

12 CLYDE KING: Okay.

13 SANDRA RIGGS: Six points were assigned which puts
14 you here and those are the criteria.

15 CLYDE KING: When was the acid put into the hole?

16 GARY EIDE: It was the 8th...the 8th of February.

17 SANDRA RIGGS: When you're...when you're considering
18 the seriousness issue, the top...across the top are the
19 issues you're supposed to be looking at. See the---.

20 CLYDE KING: Right.

21 SANDRA RIGGS: ---the top of the...the damage to
22 the environment and the danger to the public health and
23 safety, and in this case, damage to correlative or resources
24

1 are the...are the three applicable issues under six points.

2 ELIZABETH McCLANAHAN: To answer your question, Mr.
3 King. The hydrochloric acid was put into the well on
4 February 7th. It's on your report February 8th, the day
5 before February 8th, which would have been the 7th. So, by
6 the time the violation was issued, the hydrochloric acid was
7 already in the pipe.

8 DOUG GOSNELL: To be precise, it was 3:10 p.m. on
9 the 7th.

10 CLYDE KING: Your testimony was that if the acid
11 stays any longer than a certain period of time, the well can
12 be destroyed?

13 DOUG GOSNELL: Right. Approximately two weeks is
14 all that the inhibitor will protect the pipe.

15 MASON BRENT: But what we're dealing with here, Mr.
16 King, is simply the seriousness of the situation---.

17 CLYDE KING: Right.

18 MASON BRENT: ---the damage to the environment or
19 damage to public health and so forth and that's what is on
20 table one.

21 CLYDE KING: When was the big snow?

22 GARY EIDE: The big snow was in January.

23 ELIZABETH McCLANAHAN: January 27th. And then it
24

1 continued...you see there was still...there was still five
2 inches of snow on the ground on February 3rd. Four inches
3 of...it continued to snow through all of these days and there
4 was still four inches of snow on the ground February
5 7th...which is...this is a thousand feet below the
6 topographical or the elevation at---.

7 CLYDE KING: Richlands is?

8 ELIZABETH McCLANAHAN: Richlands is a thousand feet
9 below the elevation of the well site. So, obviously these
10 numbers are less than what was existing.

11 CLYDE KING: Does the road that this mining...this
12 drill site goes onto, is it a state highway?

13 GARY EIDE: It connects to a state road. The well
14 access road connects to a state road.

15 CLYDE KING: And it is a generally traveled state
16 highway?

17 GARY EIDE: Yes, sir.

18 ELIZABETH McCLANAHAN: The road...the road...the
19 portion of the road that's subject to this NOV though, is
20 actually not state highway.

21 GARY EIDE: Right. The NOV doesn't apply to the
22 state road.

23 ELIZABETH McCLANAHAN: Right.

24

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1 GARY EIDE: Where you may be coming from is
2 addressing the mud being tracked onto the state road?
3 CLYDE KING: Right.
4 GARY EIDE: Right.
5 BILL HARRIS: If I might just continue that
6 question, we saw a picture where the fence was and the gravel
7 and I guess this is just recently after it...the road had
8 been treated and covered. The road that entered onto, is
9 that the road we are talking about that is the state road or
10 is that the access road?
11 ELIZABETH McCLANAHAN: Where there was a gate.
12 BILL HARRIS: There's a gate?
13 MAX LEWIS: Yeah.
14 DOUG GOSNELL: That gate was the beginning of the
15 lease road.
16 BILL HARRIS: Okay. And so the road on this side of
17 the gate then is the state---?
18 DOUG GOSNELL: Is state.
19 BILL HARRIS: ---road that the mud rolled onto it?
20 DOUG GOSNELL: Right.
21 BILL HARRIS: Okay. I just wanted make sure of what
22 we were talking about.
23 CLYDE KING: My question a little further then would
24
25

1 be, I didn't see any stripping on it. Is it divided
2 highway...I mean---?

3 GARY EIDE: No, it is a secondary road.

4 MAX LEWIS: Secondary road.

5 CLYDE KING: Secondary. Okay. Is there many homes
6 close by on that road?

7 GARY EIDE: Yes, sir. Yes, Mr. King.

8 MASON BRENT: Does the Board have a recommendation
9 with regard to points of seriousness?

10 BILL HARRIS: Well, when I look at this and I look
11 at the pictures I...you know, the five and six I thought at
12 first maybe was a little high. But then...after I looked at
13 the pictures, I'm thinking significant actual or potential
14 damage. I would call that significant. I was going to ask
15 at first when we first started who...how do we determine the
16 points and, of course, we have the chart that we go by. But
17 to me that...the type of the damage that I saw to me looked
18 significant as opposed to moderately significant and, of
19 course, these are...these get to be subjective and maybe
20 judgment calls, but, you know, I would defer to the...you
21 know, to the inspector who sees these and I would imagine
22 that his mind has means of distinguishing between those. But
23 that appeared to me very significant. Now, whether or not

24

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1 it's a five or a six, I don't...you know, you could argue
2 that, but I would say it was significant.

3 MASON BRENT: Which would you argue?

4 BILL HARRIS: Well, I'm not...I'm not sure. But I
5 would consider it in that range based on what I saw.

6 MASON BRENT: Mr. King or Mr. Lewis, do you have any
7 comments on that?

8 CLYDE KING: Well, I...you know, I really wonder and
9 how...I have a lot of admiration for people that travel over
10 these type roads and do this type of work. And I know that,
11 you know, when you go back into the mountains and cut a road
12 to get equipment in and out on, you do have a considerable
13 amount of road building to do and you certainly can't afford
14 to build a state highway back that far and some of that mud
15 and water standing there...it looks like there was a lot of
16 considerable amount of water. However, I wonder how much
17 neglect there is.

18 MASON BRENT: Well, we'll deal with that after we
19 get through with this. Well, I'm...at least in one corner
20 here, I'm hearing support of the assignment of six points for
21 seriousness. Do I hear any objection to that?

22 (No audible response.)

23 MASON BRENT: There being no objection to that,
24

1 should we move on to the degree of negligence and uphold the
2 six points here on seriousness?

3 (No audible response.)

4 MASON BRENT: I'm hearing an awful a lot of silence
5 here. Do you agree with that?

6 BILL HARRIS: I don't know.

7 CLYDE KING: Well, if you go six points, that's
8 eight hundred dollars (\$800), is that correct?

9 SANDRA RIGGS: No, you have to get to the end for
10 total points.

11 MASON BRENT: We've got to get to the total first.

12 CLYDE KING: Okay, total points.

13 BILL HARRIS: There's...as Mr. Fulmer said, I think
14 there's...we're looking at two issues or three issues or
15 something. One of them is the good faith and I guess we'll
16 deal with that.

17 MASON BRENT: Right, we'll deal with that. What I
18 would like for us to discuss now is the degree of negligence
19 that's involved. The Division has assigned four points,
20 which as you can see down here, four to six on table two on
21 page six is characterized as gross negligence.

22 BILL HARRIS: It's really difficult to separate, and
23 I think this is the problem. When you think of the rain fall

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1 and the snow and what could be done to correct the problem
2 considering all of that was happening. So...and I'm not sure
3 what's appropriate there.

4 SANDRA RIGGS: Based on the evidence you've been
5 presented, you must make a decision. So---.

6 MASON BRENT: We're not leaving here until you do.

7 BILL HARRIS: Well, I'm just throwing out some other
8 things that---.

9 MAX LEWIS: I think they done all they could do at
10 the time to try to correct the problem.

11 CLYDE KING: Mason, I...Mr. Chairman, excuse me.

12 MAX LEWIS: I know how it is in these situations.

13 I've been through them and weather has a lot to do with
14 whether you can correct a problem at that time and I think
15 they did what they could do as quick as possible to correct
16 it.

17 BILL HARRIS: Well, the other factor though, is that
18 they did continue to use the road and that's why I asked
19 about if there was evidence of some type of corrective
20 measures taken while the rain was happening and while the
21 road was still being used and...because I wondered
22 if...because I know the weather is a factor here and that
23 would make matters worse. I was just thinking out loud.

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1 MASON BRENT: Well, the testimony I heard in that
2 regard was that the acid had been introduced in the well on
3 the 7th of February, so there was some concern there. But
4 while continuing to work on the well, there was some
5 mitigation efforts on the way to the extent that the weather
6 would allow and that's the testimony I think I heard.

7 CLYDE KING: I'm just wondering if maybe permitting
8 should consider the fact of when they are going to be doing
9 the drilling in the future should have some bearing on
10 the...we had an awful...this has been an extremely bad
11 winter.

12 MASON BRENT: I certainly hope we don't have to take
13 up that issue either.

14 MAX LEWIS: I don't think it would be left up to us.

15 MASON BRENT: Well, Mr. Lewis is suggesting that
16 negligence would be what? Can I pen you down on that one?

17 MAX LEWIS: Yeah. I'd say two. Be two, no more
18 than three.

19 MASON BRENT: Mr. Lewis is suggesting that the
20 negligence be assigned a factor of two, which is not gross
21 negligence and not a lack of negligence. Any discussion on
22 that?

23 (No audible response.)

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1 CLYDE KING: Well, that two would be slight or
2 actual or potential damage.
3 MASON BRENT: No, not damage. Just---.
4 BILL HARRIS: We're at the other page.
5 CLYDE KING: Other page.
6 BILL HARRIS: There's too many charts to look at
7 here.
8 CLYDE KING: Too many charts. Yeah, okay.
9 MASON BRENT: What we're discussing here is the
10 extent to which they attempted to mitigate the problem, were
11 they negligent or not?
12 CLYDE KING: I'd agree...I'd agree with Max on that.
13 There is some negligence, but I don't really think it's
14 gross.
15 MAX LEWIS: They are some, but---.
16 MASON BRENT: Mr. Harris, are you---?
17 BILL HARRIS: Well, I don't...I...I think under the
18 circumstances with the weather...the problem is, I'm not
19 ...you know, I don't know what could have been done and
20 that's why, you know, I did ask the inspector about if, you
21 know, what his view was of that. And I think the situation
22 was bad. I'm not sure that I would consider it gross
23 negligence. I think had it not been for the inclement
24

1 weather continuing that may have been a factor. I would...I
2 would move away from gross negligence to negligence. I'm not
3 sure...if they're saying two...again---.

4 CLYDE KING: Two is just before gross.

5 BILL HARRIS: Well, there's a three also and two in
6 there.

7 CLYDE KING: Moderately.

8 BILL HARRIS: Yeah. I'm...I'm...I'll agree with the
9 other.

10 MASON BRENT: With the two?

11 BILL HARRIS: With the two, yeah.

12 CLYDE KING: Yes.

13 MASON BRENT: Okay. Well, let's discuss on the
14 table three, any good faith credit that should be considered
15 here. And as you can read on the chart---.

16 BILL HARRIS: Well, yeah, it---.

17 MASON BRENT: ---if the violation was not abated
18 prior to the set abatement, then zero good faith points would
19 be assigned. Give one to two if prompt and diligent efforts
20 were taken and the violation was abated prior to the set of
21 abatement date, and three to four points credit if
22 extraordinary measures were taking to abate the violation in
23 the shortest time possible prior to the set abatement date.

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1 CLYDE KING: I think a two.

2 SANDRA RIGGS: The NOV had an abatement date?

3 GARY EIDE: The NOV had an abatement date, right.

4 BILL HARRIS: And that was the 19th?

5 MASON BRENT: The 19th.

6 GARY EIDE: Right.

7 BILL HARRIS: But the violation was not abated by

8 the 19th...by the 19th...no?

9 GARY EIDE: Right.

10 MASON BRENT: And then with the closure order, you

11 closed until its abated?

12 GARY EIDE: Right the closure order which is to just

13 stay off of it, right.

14 MASON BRENT: Cease until it's abated.

15 ELIZABETH McCLANAHAN: Well, no, the abatement had

16 to occur after the closure was lifted, and then the abatement

17 was required to be done after March 27th.

18 MASON BRENT: Right.

19 ELIZABETH McCLANAHAN: We...right...we couldn't do

20 anything during the time of the period of the closure order.

21 BILL HARRIS: Okay. I'm confused now. So, the set

22 abatement date that's here was for the NOV, is that correct,

23 and that was the 19th?

24

1 TOM FULMER: The original one.

2 GARY EIDE: Right the...the 19th.

3 BILL HARRIS: Now, the closure abatement date is a
4 different...that's a different date, right, that's in March?

5 GARY EIDE: Right, the closure was lifted on March
6 27th.

7 CLYDE KING: I'm confused, too.

8 BILL HARRIS: Yeah...yeah, I'm just---.

9 SANDRA RIGGS: There is no date within a closure
10 order.

11 TOM FULMER: Okay. Mr. Chairman?

12 MASON BRENT: Yes, Mr. Fulmer.

13 TOM FULMER: When the NOV was issued it had an
14 abatement date on the 19th.

15 MASON BRENT: Right.

16 TOM FULMER: The problem is...the continued problem
17 is...but the point I'm trying to make is the continued use of
18 the road prevented any abatement to occur. So, you had to go
19 to closure. I mean, they made good faith efforts to abate
20 the permit, but what...the continued use of the road created
21 other violations which created the closure order.

22 MASON BRENT: Well, and I think we've dealt with
23 that.

24

1 TOM FULMER: Well, it's...it's...I'm trying to
2 confuse up him why he's looking at abatement dates and why,
3 you know...that's the reason.

4 BILL HARRIS: Well, I was looking at the text here.
5 It says, "If prompt and diligent efforts were taken and the
6 violation was abated prior to the set abatement date to give
7 one or two points credit," and---.

8 TOM FULMER: Right, right.

9 BILL HARRIS: ---I'm saying that second part was
10 not met if the original violation...the abatement date for
11 that was the 19th. And it doesn't say, you know...you know,
12 we don't make...it doesn't say include, you know,
13 considerations for weather. I mean, I don't know what you do
14 about that, if anything.

15 TOM FULMER: I don't either. That's why you all are
16 up there.

17 ELIZABETH McCLANAHAN: Actually, rule eight says you
18 can waive it altogether because of weather.

19 BILL HARRIS: That's an easy way to solve it.

20 CLYDE KING: Mr. Chairman, I have a question.

21 MASON BRENT: Mr. King?

22 CLYDE KING: What would have happened had you not
23 closed them down? Would they have kept right on doing it?

24

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1 GARY EIDE: If the closure order wasn't issued, the
2 company would have been allowed to continue to use the road,
3 and the continued use of the road was what was causing the
4 problem.

5 CLYDE KING: Right.

6 GARY EIDE: So, the problem would have just
7 continued.

8 CLYDE KING: So, basically, if the weather...and I
9 know we're not supposed to talk about the weather too badly
10 about this thing, but had...had the weather not been what it
11 was, then it probably wouldn't have been closed and caused
12 all the problems with the water and---.

13 GARY EIDE: Well, if the weather hadn't been bad, if
14 it hadn't rained or hadn't snowed, there probably wouldn't
15 have never been an NOV.

16 BILL HARRIS: Yeah, yeah.

17 MAX LEWIS: Yeah, if you had pretty weather, you'd
18 have a hard road there.

19 CLYDE KING: Right.

20 ELIZABETH McCLANAHAN: So, waiver would be the
21 appropriate remedy.

22 TOM FULMER: Persistency.

23 GARY EIDE: If there hadn't...if there hadn't been a
24
25

1 well up there---.

2 ELIZABETH McCLANAHAN: Thank you, Mr. Eide.

3 GARY EIDE: ---wouldn't have been any NOV.

4 CLYDE KING: Yeah, the weather, the weather.

5 GARY EIDE: But I think that's the conditions that

6 you operate in and you have to make allowances for that.

7 CLYDE KING: That's right. That's true.

8 MASON BRENT: Have we cleared up your confusion?

9 CLYDE KING: Yeah...well, I'm totally confused. I'm

10 glad we don't see many of these.

11 MASON BRENT: Any recommendation from the Board?

12 CLYDE KING: I'm not sure what---.

13 BILL HARRIS: I'm just...personally, I'm just torn

14 between what, you know, what the effect the weather has on

15 this, but even given that the fact that the road was

16 continued to be used, I think was...is an issue that we can't

17 overlook, and for that reason I'm not sure if we waive it, if

18 that would be the appropriate thing to do in terms of...you

19 know, I think there was some other factors and I think the

20 weather is one of those factors, but I think that the fact

21 that the road was continued to be used despite an increase in

22 the bad conditions, I think warrants some kind of

23 consideration.

24

1 SANDRA RIGGS: Well, when you're looking at good
2 faith, what you're looking at is abatement actions. So, why
3 don't...if you can focus on that and get through this stage,
4 then you can go back and sum up where you are.

5 BILL HARRIS: Well, again, my...again, thinking out
6 loud, I think prompt and diligent efforts were taken, but the
7 violation was not abated by the set abatement date. And I
8 think...you know, I think there was good faith in that
9 behalf. But at the same time, again, continuing to use the
10 road, and I know that's not what we're to go back to, but
11 that still comes back to that.

12 MASON BRENT: So, are you suggesting some form of
13 credit points based on good faith, but not results?

14 BILL HARRIS: I don't know how we can do that.

15 SANDRA RIGGS: I think he's saying zero, is what he
16 is saying.

17 BILL HARRIS: I'm thinking...I'm thinking that.

18 MASON BRENT: Is she right?

19 BILL HARRIS: I don't know how...I don't know how
20 to...I don't know how to give credit for that because the,
21 you know, the law as written doesn't allow for that, other
22 than to waive and I don't think the waiving is appropriate.
23 I really don't.

24

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1 ELIZABETH McCLANAHAN: Mr. Chairman, I would just
2 point out that with regard to the use of the road, if you
3 will look at the inspection report that was issued on
4 February 13th, it does not at all indicate that Cabot cannot
5 continue to use the road. It just indicates that we're
6 supposed to continue to use...that we're supposed stabilize
7 sediment, which is eroded path to brush barrier, all of which
8 we did. It was not a situation where we were told not to use
9 the road and we used the road. Instead, we were asked to
10 establish additional sediment control which we did. If you
11 will look at the February 19th report...I mean, the 13th
12 report, never did the inspector say we couldn't use the road.
13 He said use additional...take additional measures for
14 sediment control, all of which we did. The problem is it
15 continued to rain. At that point, the closure order was
16 entered, so then the abatement of the closure order started
17 the very next day after the closure order was lifted which
18 was certainly in the shortest possible time available.

19 BILL HARRIS: And I think their position is, though,
20 the continued use of the road just simply made the situation
21 worse.

22 ELIZABETH McCLANAHAN: Made things worse, right.

23 MASON BRENT: Mr. Harris, not attempting to put you
24

1 on the spot---.

2 BILL HARRIS: Yeah.

3 MASON BRENT: ---but I'm trying to find some
4 catalyst here for action.

5 BILL HARRIS: Oh, I understand.

6 MASON BRENT: Are you suggesting that no points be
7 assigned for good faith? Are you throwing that out for
8 discussion?

9 BILL HARRIS: Well, I'm really throwing that out for
10 discussion. I know that doesn't help matters, but I, you
11 know, I'm...I'm, I guess, between zero and one...negative one
12 point for good faith. The thing that bothers me is that the
13 road was continued to be used and yes, I know it still rained
14 but...and again, I'm not knowledgeable enough about what
15 corrective measures could have been taken while the road was
16 being used to try to prevent further deterioration of the
17 road. And that's why I...you know, I would defer to the
18 inspector because I would think in his judgment, he's seen a
19 lot of these types of situations and would know best
20 what's...what's appropriate to be done and---.

21 GARY EIDE: I think the bottom line is compliance
22 there and I would argue that yes, they did make efforts to
23 correct the problem, but the efforts weren't enough to bring
24

1 the road into compliance. The sediment structures that were
2 put up, the stabilization measures that were taken, did not
3 abate the violation. The violation continued and it was
4 exaggerated even more with the use of the road and that's why
5 when, you know, we work with the point systems, good faith
6 wasn't considered because there wasn't any abatement. There
7 wasn't any abatement until here recently as far as the road
8 goes.

9 BILL HARRIS: Well, let me do this, since there is a
10 scale here that they point negative one and negative two, I
11 would imagine that would indicate some degree within that and
12 I would just recommend a negative one then, if you want to
13 pin me down, I'll comply with a negative one.

14 MASON BRENT: I've been trying all after...all
15 morning to pin you down.

16 BILL HARRIS: Yes. I'm not the only one to be pined
17 down though, but I guess...anyway, but I would recommend the
18 negative one.

19 MAX LEWIS: That would be one by...between one to
20 three?

21 MASON BRENT: Okay. Mr. Harris is suggesting that
22 we assign a credit of one point. Mr. Lewis, I'm sorry.

23 MAX LEWIS: Yeah, I agree with that.

24

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1 MASON BRENT: You agree with that?

2 (No audible response.)

3 MASON BRENT: Mr. King, do you have any comments on

4 that?

5 CLYDE KING: I...I guess if the rest of the Board

6 wants to go with it, I'll go with the one.

7 MASON BRENT: So, it's the Board's recommendation

8 that we assign a credit point of one for good faith. Let

9 me...let me summarize where we are and then ask for a motion.

10 With regard to the seriousness, we have assigned six points;

11 With regard to degree of negligence, the Board has suggested

12 two points; and with regard to good faith, the Board is

13 suggesting one credit. Now, with regard to the base civil

14 charge, the Division has suggested a reduction of ten percent

15 based on history of violation charges, or lack thereof. So,

16 we have come with a total of seven points if my math is

17 correct, which would be nine fifty (950), and if we allow the

18 ten percent credit for past history, your math is coming up

19 with...eight fifty-five (855)?

20 SANDRA RIGGS: Uh-huh.

21 MASON BRENT: Eight fifty-five (855). So, that's

22 where we are. I would ask for a motion.

23 BILL HARRIS: Mr. Chairman, I would move that we

24

1 would assign the points as you stated, seriousness would be
2 six points, degree of negligence two points, a one point
3 credit for good faith and a ten percent reduction due to
4 history...related to the history of those charges.

5 MAX LEWIS: I second that motion.

6 MASON BRENT: I have a second. Any further
7 discussion?

8 (No audible response.)

9 MASON BRENT: All in favor signify...signify by
10 saying aye.

11 (All members indicate in the affirmative.)

12 MASON BRENT: Opposed?

13 (No audible response.)

14 MASON BRENT: Okay. The motion is carried.

15 TOM FULMER: Thank you, Mr. Chairman.

16 ELIZABETH McCLANAHAN: Thank you. Thanks very much.

17 MASON BRENT: Thank you. I suggest that we take
18 maybe a ten minute break and then keep going again.

19 (Off record for recess.)

20 MASON BRENT: Go back into session. The next item
21 on our agenda, the Board will consider a petition from
22 Pocahontas Gas Partnership for pooling of a coalbed methane
23 unit identified as U-36 located in the Oakwood Coalbed

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1 Methane Gas Field I, in the Garden District, Keen Mountain
2 Quadrangle, Buchanan County, Virginia. This is docket number
3 VGOB-98-04/21-0648. We'd ask that all interested parties who
4 would like to come before the Board, please come forward and
5 introduce yourself.

6 SHIRLEY MAE KEENE: Excuse me. Could you speak up?
7 We can't hear you.

8 MASON BRENT: Yes, and I'd...if I may ask everyone
9 back there to have a seat and maybe discontinue discussion.

10 MARK SWARTZ: Mark Swartz and Les Arrington for the
11 applicant.

12 SHIRLEY MAE KEENE: Would you repeat the case you're
13 asking for?

14 MASON BRENT: Yes...yes, it's agenda item number
15 three and it is VGOB-98-04/21-0648. If anyone would like to
16 be involved in this case, please come forward at this time.
17 Let the record show there is no one other than Mr. Swartz and
18 Mr. Arrington. Mr. Swartz.

19 MARK SWARTZ: Before we start with the testimony on
20 this particular unit, I've just got a couple of observations.
21 Pocahontas Gas Partnership and Buchanan Production Company
22 have a lot of matters on the docket today, and I would just
23 thought I would give you the good news first. We're going to

24

--

1 be requesting that docket items seven through thirteen,
2 inclusive, which are all petitions by Buchanan Production
3 Company. They all involve only one respondent, the Hugh
4 McRae Land Trust...I'm sorry, Hurt/McQuire Land Trust. We're
5 requesting that they be continued because we have been
6 negotiating a lease with that Trust and believe that we are
7 probably going to have a lease before the next hearing. So,
8 we would request that...on behalf of Buchanan Production
9 Company, I would request that seven through thirteen
10 inconclusive be continued to next month.

11 MASON BRENT: And they are...if I may go through
12 those docket numbers, they are VGOB-98-04/21-0652, VGOB-98-
13 04/21-0653, VGOB-98-04/21-0654, VGOB-98-04/21-0655, VGOB-98-
14 04/21-0656, VGOB-98-04/21-0657 and finally VGOB-98-04/21-0658
15 will be continued. Are there any objections from anyone here
16 in regard to that continuation?

17 MARY KEENE: Ours is 0649.

18 MASON BRENT: I'm sorry. I didn't hear you.

19 MARY KEENE: Ours is 0649.

20 MEMBER OF THE AUDIENCE: (Inaudible.)

21 MASON BRENT: That's...that is not...that's not
22 included in these...in this continuation.

23 MARY KEENE: Oh, okay.

24

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1 MASON BRENT: Hearing no objection, those docket
2 items are continued.

3

4 MARK SWARTZ: Thank you. With regard to the docket
5 item that you called first, which is unit U-36, I would just
6 make a couple of preliminary comments to kind of focus the
7 Board on what kind of units we're dealing with and the kind
8 of testimony that you're likely to hear from Mr. Arrington
9 with regard to that. The U-36 unit and the other three units
10 on the docket today are all above the Buchanan Number I Mine.
11 Last month when we met, we had a number of units that were
12 also above the Buchanan County Number I Mine. Like those
13 units, these four units are frac units only. So, they're
14 under Oakwood I field rules only and so they're...it's a
15 little different because usually we're here pooling under
16 Oakwood I and Oakwood II. The reason that these are being
17 pooled as frac wells is the same problem that we had last
18 month with the long wall panels being on either side of a
19 trade line and we're going to be degassing the mine, but in
20 advance of mining, but we have not as yet formulated a plan
21 to deal with active gobs. So, that's why they're all frac
22 units and Mr. Arrington has a mine map that we used the last
23 time. The location of the wells is being driven by the mine

24

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1 plan and we'll have a copy of that for you all as we proceed
2 today. The same mine plan would apply to all of these units.
3 We're just recycling an Exhibit from last month and I would
4 also alert you to the fact that not in all instances, but in
5 three out of four of the applications this morning, there are
6 multiple frac wells in the unit. And again we're dealing
7 with the authorization of the Board to allow multiple wells
8 in a unit pursuant to the provisions of the...actually, it's
9 sub-part C of 36120 and also we would alert, or just remind
10 you, of the fact that Mr. Fulmer, under the Oakwood I, rules
11 has the ability to grant location exceptions for wells that
12 are outside of the window. With that sort of introduction as
13 to what kind of units we're talking about this morning, I'd
14 ask that Mr. Arrington be sworn and we can move into the
15 testimony on U-36.

16

17

18 LESLIE K. ARRINGTON

19 having been duly sworn, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. SWARTZ:

23 Q. Mr. Arrington, would you state your name for

24

--

1 us, please?

2 A. Leslie K. Arrington.

3 Q. Who do you work for?

4 A. Consol.

5 Q. And is Consol an operator for Pocahontas Gas

6 Partnership?

7 A. Yes, they are.

8 Q. Okay. And the application that we're

9 dealing with regard to U-36, who is the applicant?

10 A. Pocahontas Gas Partnership.

11 Q. Okay. And the...did you prepare the notice

12 and the application with regard to this unit U-36?

13 A. Yes, I did.

14 Q. Okay. Pocahontas Gas Partnership, who are

15 the partners in that partnership?

16 A. Consolidation Coal Company and Conaco, Inc.

17 Q. Does the application request that someone be

18 appointed designated operator, and if so, who is that?

19 A. Yes, Pocahontas Gas Partnership.

20 Q. Okay. And is Pocahontas Gas Partnership

21 authorized to do business in the Commonwealth?

22 A. Yes, it is.

23 Q. And has it registered with the Department of

24

1 Mines, Minerals and Energy and does it have a blanket bond on
2 file?

3 A. Yes, it does.

4 Q. The people that are list...are the
5 respondents on this application, are they listed in the
6 notice of application on the very first page?

7 A. Yes, they are.

8 Q. Do you want to add any folks to pool today?

9 A. No, we do not.

10 Q. Do you wish to delete or dismiss any people
11 today?

12 A. Yes, we do. We obtained some additional
13 leases in this unit. I have listed those on the additional
14 ...on the exhibits. Those folks are listed on the
15 exhibit...listed on page ten through fifteen, the revised
16 Exhibit F as dismissals.

17 Q. And if you look at...really, the only change
18 is to the first page of Exhibit F where there is a paragraph
19 number five, dismissals, correct?

20 A. That's correct.

21 Q. And those are the folks that you had noticed
22 as respondents...would you read their names?

23 A. Yes. Thomas H. Stillwell, Daniel Stillwell

24

--

1 and Bernice R. Lamb.

2 Q. And those folks...you've obtained leases
3 from them and would request they be dismissed?

4 A. That's correct, we have.

5 Q. And the rest of the respondents noticed in
6 the notice of hearing, you would want to continue with the
7 pooling hearing with regard to those folks?

8 A. Yes, we would.

9 Q. Okay. Did you mail notice of this hearing
10 to the respondents?

11 A. Yes, we did on March 20, 1998, by certified
12 mail, return receipt requested.

13 Q. And who did you mail to?

14 A. All of the respondents noticed on Exhibit B-
15 3.

16 Q. Okay. And the packet that you passed out
17 today has a list...has an Exhibit B-3 and has a---?

18 A. Yeah.

19 Q. ---list of respondents?

20 A. Yes, that's the revised Exhibit B-3
21 reflecting...not showing the leased parties.

22 Q. Not showing the three people that you're
23 dismissing today?

24

--

1 A. That's correct.

2 Q. Okay. And you mailed to all of these folks?

3 A. Yes, we did.

4 Q. Okay. And then there's also today you've

5 filed proof of publication indicating the status of the

6 mailing?

7 A. Yes, we did.

8 Q. Okay. Did you also publish?

9 A. Yes, we did in the Bluefield Daily Telegraph

10 on March 31, 1998.

11 Q. And have you filed a certificate of

12 publication?

13 A. Yes, we have.

14 Q. In this packet of exhibits that you passed

15 out today, is there a revised Exhibit A, page two?

16 A. Yes...yes, there is. It's page number

17 eight.

18 Q. And that exhibit had to be revised because

19 you've obtained some more leases---?

20 A. Yes.

21 Q. ---since it was originally prepared?

22 A. That's...that's correct.

23 Q. Okay. And revised Exhibit A, page two,

24

1 shows the interests that you've acquired or leased and shows
2 the interests that need to be pooled, is that correct?

3 A. That's correct.

4 Q. Is it true that you have acquired leases
5 from 100 percent of the coal owners?

6 A. Yes, it is.

7 Q. And what percentage of the oil and gas
8 owners have you obtained leases from?

9 A. 76.52397 percent.

10 Q. And what percentage of the oil and gas
11 interest does this application seek to pool?

12 A. 23.47603 percent.

13 Q. Okay. And in terms of the leases that
14 you've obtained from the coal owners and the oil and gas
15 owners, what are the terms generally that you have offered to
16 obtained those leases?

17 A. Yes, the general term is a dollar per acre
18 rental, a one-eighth royalty with a five year term on it.

19 Q. And when is the rental payable...the dollar
20 acre rental?

21 A. On a dollar per acre is an annual basis
22 until production begins.

23 Q. And after production commences, what's the
24

1 payment?

2 A. The royalty.

3 Q. The one-eighth royalty?

4 A. The one-eighth royalty, yes.

5 Q. Okay. Would you recommend those terms to

6 the Board in any order that might be entered with regard to

7 deemed to have leased parties?

8 A. Yes, we would.

9 Q. This is an eighty acre unit?

10 A. Yes, it is.

11 Q. And are you seeking to pool it under the

12 Oakwood I rules?

13 A. Yes, we are.

14 Q. And that would be...that would contemplate

15 that there would frac wells in the unit, correct?

16 A. Yes, that's correct.

17 Q. There is a plat in the original application

18 which shows the location of three wells, correct?

19 A. That's correct, it does.

20 Q. And those wells are identified on the plat

21 as U-36A, U-36 and U-36B, correct?

22 A. That's correct.

23 Q. Permits have been obtained for two of those

24

1 wells already---?

2 A. That's correct.

3 Q. ---and one is yet to be permitted?

4 A. That's correct.

5 Q. Okay. Is one of these wells outside of the

6 Oakwood I drilling window?

7 A. Yes, it is. Well number U-36.

8 Q. And that well you will be requesting that

9 Mr. Fulmer, consistent with the Oakwood rules, grant a

10 location exception?

11 A. Yes, we would.

12 Q. Okay. Do you have with you, that you could

13 pass out to the Board today, copies of the Buchanan I Mine

14 Plan?

15 A. Yes.

16 (Witness gives mine plan to the Board members.)

17 Q. Les, these three wells in unit 36 are...U-36

18 are shown on the mine plan, correct?

19 A. They are.

20 Q. Okay. And the wells are actually located in

21 two different projected long wall panels, is that correct?

22 A. That's correct, they are.

23 Q. The blue lines that run from east to west,

24

1 showing the large areas are actually...each one of those
2 would be a long wall panel?

3 A. That's correct.

4 Q. And the blue rectangles to the right are
5 projected entries?

6 A. That's correct, it is.

7 Q. And the black in the...sort in the center,
8 that is entry that have already been completed?

9 A. That's correct, it is.

10 Q. Okay. The...but the location of these three
11 wells, these three frac wells, is dictated by the two long
12 wall panels, is it not?

13 A. That's correct, they are.

14 Q. Okay. And you're requesting that the Board,
15 consistent with 36120C, allow multiple wells in this unit to
16 comply with your mine plans?

17 A. Yes.

18 Q. Okay. How many of these wells are being
19 charged as costs, or allocable costs, in your application in
20 the event that anyone would want to participate?

21 A. Only one.

22 Q. Okay. And so the well cost estimate that is
23 utilized in your application is simply for one frac well?

24

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1 A. That's correct, it is.

2 Q. And what is the estimate with regard to that

3 one well?

4 A. Two hundred and forty-five thousand five

5 hundred and fourteen dollars and seventy cents (\$245,514.70).

6 Q. And what is the average depth of the

7 Pocahontas Number Three seam at that location?

8 A. The approximate depth of this well...these

9 wells will be approximately 2212 feet.

10 Q. Okay. And you prepared...you personally

11 prepared this well estimate?

12 A. Yes, I did.

13 Q. And it was prepared on March 19th?

14 A. Yes, it was.

15 Q. And the only amended exhibits here are A,

16 page two, B-3 and the first page of Exhibit F?

17 A. That's correct, it is.

18 Q. Okay.

19 SANDRA RIGGS: I'm sorry. A, page 2, B-3, and what

20 was the last one?

21 MARK SWARTZ: The first page of Exhibit F.

22 Q. Is it...is it...do you recommend that the

23 development contemplated by this application be approved by

24

1 the Board in pooling the unit as reasonable method to extract
2 coalbed methane from under the unit and allocate that
3 production to the...to all people who have an interest in the
4 materials under the unit?

5 A. Yes, we would.

6 Q. That's all I have.

7 MASON BRENT: Any questions from the Board?

8 (No audible response.)

9 MASON BRENT: Is there a motion from the Board?

10 CLYDE KING: I move we approve.

11 BILL HARRIS: Second.

12 MASON BRENT: We have a motion and a second. Any
13 further discussion?

14 (No audible response.)

15 MASON BRENT: All in favor signify by saying aye?

16 (All members indicate in the affirmative.)

17 MASON BRENT: Opposed?

18 (No audible response.)

19 MASON BRENT: Hearing no opposition, the motion is
20 carried.

21 The next item on our agenda, the Virginia Gas and
22 Oil Board will consider a petition from the Pocahontas Gas
23 Partnership under Section 45.1-361.22 for pooling of a

24

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1 coalbed methane unit identified as S-37 located in the
2 Oakwood Coalbed Methane Gas Field I, in the Garden District,
3 Jewell Ridge Quadrangle, Buchanan County, Virginia. This is
4 docket number VGOB-98-04/21-0649. I'd ask all interested
5 parties to come forward at this time and please introduce
6 yourself.

7 MARK SWARTZ: Mark Swartz and Les Arrington for
8 Pocahontas Gas Partnership.

9 BRYAN SLAUGHTER: My name is Bryan Slaughter with
10 Michie, Hamlett, Lowry, Rasmussen & Tweel in Charlottesville,
11 Virginia. This is Shirley Mae Keene and she would like to
12 offer comments regarding this application. And this is Miss
13 Sarah Day.

14 MASON BRENT: Mr. Swartz?

15

16 LESLIE K. ARRINGTON

17 having been duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 QUESTIONS BY MR. SWARTZ:

21 Q. Mr. Arrington, I would remind you that
22 you're still under oath, okay?

23 A. Yes.

24

--

1 Q. You need to state your name for us, again.
2 A. Leslie K. Arrington.
3 Q. And who do you work for?
4 A. Consol.
5 Q. Did you prepare both the notice of hearing
6 and the application with regard to the pooling of unit S-37?
7 A. Yes, I did.
8 Q. And you've signed both of them?
9 A. Yes, I have.
10 Q. To focus the Board on the interest that
11 we're talking about here, between the time the application
12 was filed and today, were you able to obtain a lease from
13 Willard Osborne?
14 A. Yes, we were.
15 Q. So, we're going to be requesting that the
16 Board dismiss the first respondent listed on the notice of
17 hearing, Mr. Willard Osborne, because he has leased his
18 interest to PGP?
19 A. That interest has been leased, yes.
20 Q. Okay. But the balance of the folks listed
21 in the notice of hearing, the Linkous Horne heirs devisees,
22 successors or assigns and then the people listed after there,
23 those are the folks that we're seeking to pool today,
24

1 correct?

2 A. That's correct, it is.

3 Q. And they are in, if you look at the tract
4 identification, they're in Tract 5B, is that correct?

5 A. Just a minute. Yeah, 5B, that's correct.

6 Q. And if you look at the plat map that
7 is...there's one that's attached to the application and
8 there's one that's attached to the notice, but if you look at
9 the plat map, Tract 5B, just a corner of it catches the unit
10 at the...well, the bottom left hand corner, correct?

11 A. That's correct.

12 Q. And how much acreage in 5B is within this
13 unit?

14 A. .1...0.1 acres.

15 Q. And what percentage of the unit is that?

16 A. 0.125 percent.

17 Q. Percent?

18 A. Yes.

19 Q. Okay. And that's the interest that we're
20 seeking to pool today?

21 A. That's correct, it is.

22 Q. Can you tell me whether or not you have...
23 Pocahontas Gas Partnership has either owned or leases all of
24

1 the rest of the methane interest within unit S-37, with the
2 exception of .125 percent?

3 A. That's correct, we do.

4 Q. Who is the applicant today?

5 A. Pocahontas Gas Partnership.

6 Q. And who are the partners in that
7 partnership?

8 A. Consolidation Coal Company and Conoco, Inc.

9 Q. Is there a request that someone be
10 designated the Board's operator here?

11 A. Yes, Pocahontas Gas Partnership.

12 Q. Okay. Is PGP authorized to do business in
13 the Commonwealth of Virginia?

14 A. Yes, they are.

15 Q. Has PGP registered with the Department of
16 Mines, Minerals and Energy and does it have a blanket bond on
17 file as is required by law?

18 A. Yes, it does.

19 Q. The names of the respondents here, we've
20 touched on that, but are they listed in the notice of hearing
21 and also in the revised Exhibit B-3 which is in the packet
22 you passed out to the Board today?

23 A. Yes, they are.

24

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1 Q. Okay. Can you describe the efforts you made
2 to mail to these folks?

3 A. Yes, that was mailed by certified mail,
4 return receipt requested on March 20th, 1998.

5 Q. And there's a certification of notice and
6 copies of the green cards in the packet of exhibits you
7 tendered today?

8 A. Yes, they are.

9 Q. Those...the certification of notice shows
10 the dates on which people signed for the mail, the dates on
11 which two items were returned as not signed for or not
12 deliverable---?

13 A. That's correct.

14 Q. ---and then two open items that was mailed,
15 but the post office hasn't gotten back to you?

16 A. That's correct.

17 Q. Okay.

18 BRYAN SLAUGHTER: Could we have a copy of those?

19 MARK SWARTZ: Sure.

20 BRYAN SLAUGHTER: Thank you.

21 MARK SWARTZ: Here's an extra one.

22 BRYAN SLAUGHTER: Thanks.

23 Q. Did you also publish?

24

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1 A. Yes, we did, in the Bluefield Daily
2 Telegraph on March 31st, 1998.

3 Q. And what was it that was published?

4 A. The notice of hearing attached to the
5 application.

6 Q. And did...have you filed a certificate of
7 publication from the newspaper today?

8 A. Yes, we have.

9 Q. And that's in this packet as well?

10 A. Yes, it is.

11 Q. And do you wish to add any respondents?

12 A. No, we do not.

13 Q. Okay. And do you, in fact, wish to dismiss
14 one of the respondents?

15 A. Yes. Again, that's...that person is listed
16 on the revised Exhibit F, paragraph five.

17 Q. And who is it?

18 A. The Willard Osborne interest.

19 Q. Okay. If you...if you would go...turn to
20 the revised Exhibit A, page two, we touched on this already,
21 but just to focus on it for a moment. Is it a fact that
22 Pocahontas Gas Partnership has leased the coalbed methane
23 interest of 100 percent of the coal owners?

24

1 A. Yes, it is.

2 Q. And is it a fact that Pocahontas Gas

3 Partnership has leased the coalbed methane interest of 99.875

4 percent of the oil and gas owners?

5 A. Yes, it is.

6 Q. And how much of an interest remains...oil

7 and gas interest remains unleased or outstanding?

8 A. 0.125 percent.

9 Q. And is that what we're seeking to pool

10 today?

11 A. Yes, it is.

12 Q. With regard to the 99 plus percent that is

13 leased, could you tell the Board what the typical lease terms

14 have been?

15 A. A typical coalbed methane lease is a dollar

16 per acre rental, one-eighth royalty on a five year term. The

17 one dollar (\$1.00) per acre rental is payable on an annual

18 basis until the production commences, and then thereafter,

19 the royalty is payable.

20 Q. And is that a standing offer that you would

21 make to the respondents that are here today?

22 A. Yes, it is.

23 Q. Would you recommend those terms to the Board

24

1 as the terms that should be incorporated in any order it
2 might enter with regard to deemed to have leased parties?

3 A. Yes, we would.

4 Q. This particular drilling unit is an eighty
5 acre unit?

6 A. Yes, it is.

7 Q. And it's...and we're seeking to pool under
8 the Oakwood I rules?

9 A. Yes.

10 Q. And that would be all the coalbed methane
11 seams below the Tiller Seam?

12 A. Yes, it is.

13 Q. And does the plat indicate how many wells
14 are contemplated?

15 A. Yes, it does.

16 Q. And how many is that?

17 A. Within this unit?

18 Q. Correct.

19 A. S-37, I believe it to be two.

20 Q. And they're show both on Exhibit A to the
21 application and again, on the Buchanan Number One Mine
22 Exhibit?

23 A. Yes.

24

--

1 Q. Do you have an extra one of those?

2 A. Yes.

3 (Mr. Swartz gives Mr. Slaughter a copy.)

4 BRYAN SLAUGHTER: Thank you.

5 Q. And with regard to unit S-37, if we look at

6 that unit on the Buchanan Number One Mine Plan, again, we see

7 a situation where two different long wall panels affect that

8 unit?

9 A. That's correct, it does.

10 Q. And that's the reason why there is more than

11 one well, correct?

12 A. Yes, that's correct.

13 Q. Again, as in the last application, how

14 many...the cost of how many of the two wells do you seek to

15 assign or allocate to people who might participate?

16 A. Only one.

17 Q. And your exhibit here estimates the cost as

18 what?

19 A. Two hundred and forty-five thousand dollars

20 five hundred...two hundred and forty-five thousand five

21 hundred and fourteen dollars and seventy cents (\$245,514.70).

22 Q. And this includes the cost of fracturing

23 and...fracture stipulation?

24

1 A. Yes, it does.

2 Q. When was this estimate prepared?

3 A. March 19th, I believe. Yes, March 19, 1998.

4 Q. And did you prepare it?

5 A. Yes, I did.

6 Q. And your average depth that you have assumed

7 to prepare this is what?

8 A. 2212 feet.

9 Q. And that would pertain to the Pocahontas

10 Number Three seam?

11 A. Yes, it would.

12 Q. Okay. And the mine plan is, is a mine plan

13 to mine in the Pocahontas Number Three seam?

14 A. Yes, it is...yes.

15 Q. With regard to the two wells in this

16 particular unit the 37 unit, are both of them within the

17 drilling window established by Oakwood I?

18 A. Yes, they are.

19 Q. So, they are both within that three hundred

20 foot window?

21 A. Yes.

22 Q. Does the amended Exhibit B-3 set forth the

23 interest or claims of the Linkous Horn heirs collectively in

24

1 the unit?

2 A. Yes, it does.

3 Q. And their collective interest is .125

4 percent?

5 A. That's correct, it is.

6 Q. And then under that collective interest,

7 there's a further breakout of each of the heirs that you've

8 been able to identify and your assessment of their individual

9 interest?

10 A. That's correct, it does.

11 Q. Okay. And with regard to a frac unit, you

12 only need one percentage to allocate costs, to allocate bonus

13 or to allocate royalty, is that correct?

14 A. That's correct.

15 Q. And the last column here calculates

16 collectively for all of the heirs, and then individually for

17 the heirs that you've been able to identify, their percentage

18 that would be applicable to those three calculations?

19 A. Yes.

20 Q. And the only thing that really has changed

21 from the original Exhibit B-3 to the revised Exhibit B-3 is

22 that you have removed Willard Osborne from the exhibit?

23 A. That's correct.

24

1 Q. The Linkous Horne heirs' percentages have
2 remained the same?

3 A. Correct.

4 Q. Would you recommend the development
5 contemplated by this application to the Board as a reasonable
6 method to develop the coalbed methane of all of the owners
7 and claimants within unit S-37?

8 A. Yes, we would.

9 Q. That's all I have.

10 MASON BRENT: Mr. Slaughter, do you have any
11 questions?

12 BRYAN SLAUGHTER: The only question I would have is
13 whether they have a breakout of their estimate for the costs?

14 MARK SWARTZ: It should be in your application.

15 MASON BRENT: It's in the application.

16 BRYAN SLAUGHTER: The actual breakout?

17 MARK SWARTZ: Right. Exhibit C. Looks like---.

18 SANDRA RIGGS: Exhibit C.

19 LESLIE K. ARRINGTON: Exhibit C to the application.

20 SANDRA RIGGS: He's looking at the amendments, I
21 think. Mark. He needs the application.

22 LESLIE K. ARRINGTON: Yeah.

23 MARK SWARTZ: He needs to grab the Exhibit.

24

1 BRYAN SLAUGHTER: I'm not sure I do.

2 LESLIE K. ARRINGTON: Okay.

3 MARK SWARTZ: Do you have an extra copy of the

4 Exhibit?

5 SANDRA RIGGS: You can have mine.

6 BRYAN SLAUGHTER: Okay. I'd just like to review

7 that.

8 MARK SWARTZ: Yeah.

9 BRYAN SLAUGHTER: Okay. Miss Keene and Miss Day

10 would just like to say...to offer their comments regarding

11 this. I realize that under the law that...the way the law

12 stands now, legally they might not have the...what is going

13 on legally might be correct. But they would like to offer

14 their comments.

15 MASON BRENT: We'd be glad to hear them.

16 BRYAN SLAUGHTER: Thank you.

17 SHIRLEY MAE KEENE: I'm Shirley Keene. I have two

18 brothers, or two sisters and one brother that lives on this

19 property and I would like to ask on this acid that they are

20 putting down in these wells, is there any danger of this

21 getting in our water streams?

22 LESLIE K. ARRINGTON: Not...not to my knowledge.

23 Tom.

24

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1 TOM FULMER: The acid that they use is about 15
2 percent by volume. So, it is highly diluted plus the fact
3 that once it is spent on the cement, it is reduced further
4 again and then once the well is actually fraced back, then
5 the...then the acid is acidic water. I would say. Acidic
6 water will be brought back to the surface.

7 SHIRLEY MAE KEENE: But it still can get in our
8 water streams?

9 TOM FULMER: That's a broad question.

10 MARK SWARTZ: Well, you know, you might want to tell
11 her about the water protection string and so forth and the
12 cementing so that---.

13 TOM FULMER: Well, the cementing in regards to the
14 development of the well, there is a water protection string
15 which would be set and which is cemented into the ground
16 below any known water sources. So, what actions as far as
17 the fracing fluid is below any known water....that's being
18 used.

19 SHIRLEY MAE KEENE: Well, I have...they have been
20 some water pumps that have blown out of the wells because of
21 gas, and are you responsible for that?

22 TOM FULMER: Am I responsible?

23 SHIRLEY MAE KEENE: Is the gas company responsible
24

1 for that?

2 TOM FULMER: It would depend on the circumstances.
3 I...I mean, I would have to do an investigation and so forth.

4 SHIRLEY MAE KEENE: Well---.

5 MASON BRENT: Mr. Fulmer is not with the gas
6 company. He is with the State of Virginia.

7 SHIRLEY MAE KEENE: But is the gas companys
8 responsible? What I'm trying to say is if they ruin our
9 water, are they going to replace our water? This is our
10 homes. We live there and we can't just pick up and move.

11 SANDRA RIGGS: The General Assembly, this session,
12 introduced and passed, I think, a water replacement provision
13 as an amendment to the Virginia Gas and Oil Act and I'm not
14 sure where that bill stands at the moment. If passed, it
15 would become effective July 1.

16 TOM FULMER: It has passed.

17 SANDRA RIGGS: So, you would have to look to the
18 statute to see what water protection or water replacement
19 provisions have been adopted by the General Assembly this
20 session.

21 BRYAN SLAUGHTER: I think some of those provide for
22 having tanks brought in and put on your property, which Miss
23 Keene does not feel is acceptable.

24

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1 SHIRLEY MAE KEENE: No.

2 SANDRA RIGGS: Well, that goes to---.

3 TOM FULMER: That's not what it says.

4 SANDRA RIGGS: No, it doesn't talk about tanks.

5 TOM FULMER: I think you need to go back and read

6 the statute.

7 BRYAN SLAUGHTER: Okay.

8 TOM FULMER: It says a water replacement. There's

9 temporary replacement and permanent replacement.

10 BRYAN SLAUGHTER: Okay. Okay.

11 SHIRLEY MAE KEENE: And would I be allowed to ask

12 the Gas Board if they could do something about checking the

13 gas sites out before permits are given? The damage that---.

14 SANDRA RIGGS: Well, this...this particular well is

15 not on your property. You realize that? I mean, is that---?

16 SHIRLEY MAE KEENE: All of these wells, we own all

17 gas and mineral rights on all of these wells that's going

18 down.

19 SANDRA RIGGS: Well, now are you talking about

20 surface now or are you talking about gas, I guess?

21 SHIRLEY MAE KEENE: We're talking about the mineral

22 rights and the gas we own...under Willard Osborne, we own.

23 SANDRA RIGGS: Okay. So, when you're asking the

24

1 inspector to come out and check the site, I take that to mean
2 the surface of the site, the permit area, is that...that was
3 your question?

4 SHIRLEY MAE KEENE: Before any permits is given to
5 the gas company, have somebody check these sites out and
6 inspect the damages that do occur before the...before the
7 permits are given because this is...this is our home.

8 SANDRA RIGGS: The Water Replacement Bill that was
9 adopted by the General Assembly this session provides for
10 a...what do they call it a pre...for the operator to go
11 and---?

12 TOM FULMER: Pre-survey.

13 SANDRA RIGGS: ---water samples, pre-existing
14 condition survey, and if the owner refuses to allow that to
15 happen, then it does affect their rights to replacement
16 should they later claim their damages. So, that's covered in
17 the statutory change that's been adopted by the General
18 Assembly this session, which would come into affect on July
19 1, if it gets through. I guess, what's it in now, the veto?

20 TOM FULMER: It is.

21 SANDRA RIGGS: Before the Governor for signature at
22 this point, I think.

23 TOM FULMER: Those are passed.

24

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1 CLYDE KING: They're in veto session this week.

2 SANDRA RIGGS: Well, it's beyond that one...that one

3 has actually been reported out?

4 TOM FULMER: Reported out.

5 SANDRA RIGGS: Okay.

6 BILL HARRIS: I guess, her question though, at the

7 present time, what...does she have a recourse? Do...I mean,

8 when there is a permit that's issued, do the inspectors go

9 out to the surface and look at that time?

10 TOM FULMER: We do a pre-permitting before they even

11 permit an issue.

12 BILL HARRIS: And the pre-permit, does that...does

13 that involve a physical onsite inspection?

14 TOM FULMER: Yes.

15 BILL HARRIS: Okay. Okay. So, it is---?

16 MARK SWARTZ: Well, and also, in this particular

17 ...well, in all cases with PGP, they do a water survey within

18 a 500 feet of the proposed well. I'm not sure that they are

19 required to do that, but they do that to protect themselves,

20 frankly, to determine what water sources, you know, pre-exist

21 the well, what the quality of the water is, what the flow is,

22 get some feel for what's out there and they do that, and that

23 was done here.

24

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1 SHIRLEY MAE KEENE: It's not just the question of
2 the water.

3 MARK SWARTZ: And I'll will let you finish, too,
4 okay? So, that is done so that there is some evidence of
5 pre-exist drilling of the well with regard to the quality of
6 the water, condition of the water and the flow of the water.
7 So, you've got a base line. In addition, in this particular
8 instance, we're looking at roughly 789 feet of seven inch
9 casing which is the water protection string. So, you know,
10 unless you have a well...a water well and of course, we look
11 into that, but unless a water well would exceed that depth,
12 it would...you know, it would be well above the water
13 protection string which is then cemented in. So, I mean,
14 there are...you know, attention is paid to wells in the area.
15 The state law requires a water protection string. It's not
16 something that is optional. Mr. Fulmer's office looks at the
17 water protection string and I've looked...in the permitting
18 process, looks at the site. I would point out, you know, Mr.
19 Arrington commented on this, but if you look at the location
20 of the wells and you look at the location of the tract, I
21 mean, these wells are not on the surface that is owned by the
22 Linkous Horne heirs. You know, it's...you know, it shows
23 the...the tract that they are concerned about is quite some

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1 considerable distance away.

2 MAX LEWIS: More than five.

3 MARK SWARTZ: They're going to be...they're going to
4 be pooled in the unit, though. So, I mean, to the extent
5 there's production and conflicting claims, it will be dealt
6 with, but, you know, we certainly try...we had this
7 conversation with you all before, but we certainly make every
8 effort to stay off of the surface of people that we do not
9 have an agreement with and try not to drill under severance
10 deeds, and that has occurred here as well with regard
11 to...with regard to the location of these...of these wells.

12 SHIRLEY MAE KEENE: Excuse me. The only thing they
13 got from Willard Osborne was a right of way. Willard Osborne
14 did not own the minerals, he did not own the gas and he did
15 not own the coal. That was excepted before Willard Osborne
16 bought the property and the only thing they have from Willard
17 Osborne is a right of way only.

18 JOE HORNE: Can I say one thing? The well is going
19 down on Arland Osborne, not on Willard.

20 MASON BRENT: Would you...if you would like to say
21 something, would you please come up here and introduce
22 yourself for the record?

23 JOE HORNE: The well is not on Willard Osborne, it's

24

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1 just right of way across them to Linkous Horne heirs where
2 the well is going down on Arland Osborne.

3 MASON BRENT: Can we have your name for the record,
4 please?

5 JOE HORNE: Joe Horne, one of the heirs.

6 MASON BRENT: Thank you.

7 MARY KEENE: The land, though, on Willard Osborne
8 that's the heirs---.

9 MASON BRENT: I'm sorry, if you would like to
10 address the Board, you need to make an appearance up here and
11 introduce yourself.

12 MARY KEENE: The Willard Osborne over across the---.

13 MASON BRENT: May I have your name, please?

14 MARY KEENE: Mary Keene, and I am one of the owners
15 on the property. The oil...the gas and minerals and stuff
16 under Willard Osborne also belongs to the Horn heirs.

17 JOE HORNE: But the well...Joe Horn. But the well
18 is on Arland Osborne. It is not on Willard.

19 MARY KEENE: Unh-huh.

20 MASON BRENT: Let me...let me, if I may say here, we
21 are not here to decide title issues and that kind of thing.
22 We're dealing solely with the pooling order. This Board
23 often takes the time in its hearings to try to help educate
24

1 everybody here as to what's going on.

2 MARY KEENE: Well, I have one more question.

3 MASON BRENT: Yes, ma'am.

4 MARY KEENE: You said you put concrete in there and

5 it is not supposed to let the acid out. How does it get the

6 gas out if it don't let the acid out?

7 BILL HARRIS: Now, there's a---.

8 MASON BRENT: Mr. Fulmer, would you address that?

9 MAX LEWIS: It's pushed outside of the pipe.

10 TOM FULMER: The casing is cemented, you know, it is

11 not concreted, it is cemented. There's a big difference.

12 It's a slurry. It's a cement slurry. Okay?

13 MARY KEENE: Well, if the acid can't get through can

14 the water not---?

15 TOM FULMER: Well, let me explain. Let me explain.

16 As they put the casing in, the cement is pumped down on the

17 inside of the casing. There is a cement shoe at the bottom.

18 At the bottom, that cement comes out and comes up around the

19 outside of the casing between the rock surface or the

20 formation and the casing. That cement is being chased with

21 water. So, it's all pushed out...all the cement that goes

22 inside the casing is pushed outside the casing. When they go

23 into perforation...now, we're talking about a production

24

1 string. On your water string, that is cemented to the
2 surface from the outside of the casing. They will set a
3 production string. When that production string...it is also
4 cemented out...on the outside of it, they'll go in and
5 they'll perforate the casing. Perforate meaning they will
6 shoot a hole in the casing. Okay? When they put the acid
7 in, the acid is a...just a small strength because the cement
8 is a carbonate and it reacts to the acid and makes calcium
9 carbonate which is a gas.

10 MARY KEENE: Well, would you---.

11 TOM FULMER: Okay. Now, that then creates the clean
12 surface between the hole in the formation.

13 MARY KEENE: Would you drink the water from our
14 wells everyday, all day long, and at night too in that water
15 until something was done for it?

16 TOM FULMER: Yeah, sure.

17 MARY KEENE: Would you drink that water?

18 TOM FULMER: Uh-huh.

19 SARAH DAY: I'm Sarah Day, and I wanted I wanted to
20 ask how close to the surface owners are they allowed to dig a
21 well?

22 SANDRA RIGGS: As close as they have the legal right
23 to do so. That...the location is...there are certain

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1 location limitations set by statute. As long as they're
2 within those legal limitations and they acquire, either
3 through their deeds or through easements or some other legal
4 document, the right to put the well on, then that's
5 a...what's called a legal location.

6 MARK SWARTZ: Well, there's a 200 foot limit on
7 buildings. I don't know if that is what she---.

8 SANDRA RIGGS: Well, she's talking about property
9 lines, I thought.

10 SARAH DAY: Right, yeah.

11 SANDRA RIGGS: As opposed to improvements.

12 SARAH DAY: Surface land, how close that you would
13 be able to put a well on---?

14 SANDRA RIGGS: Well, I guess, when you look at the
15 drilling unit that's been created through this application,
16 it is an eighty acre drilling unit. The well location within
17 that drilling is established through the field rules or
18 through except...what they call location exceptions, if one
19 is required. Those do not look at property line...property
20 lines in order to determine that location. They don't
21 relate...they relate to certain improvements and other
22 surface features, but not to property lines.

23 SARAH DAY: Well, the Pocahontas Partnerships, they
24

1 only offer one-eighth percent, which back in 1900, I'd say
2 that's what I'd it was then. So, they still want it up here
3 in '98.

4 SANDRA RIGGS: That's what it is nationally. I
5 think it is what it's referred to in the statute as well.

6 SARAH DAY: And I have got their deed that they have
7 got. On this...it looks like the same...well, the same
8 handwriting wrote the deed, signed the deed. We still think
9 we own the coal rights. So, hand it down that way.

10 SANDRA RIGGS: Well, this pooling application does
11 not address title issues. They...through their application,
12 they're saying that you may claim an interest in the gas.
13 However, that interest is acquired through gas and oil
14 leases, through severance deeds, through whatever. They're
15 naming you as a party because you may claim ownership of the
16 gas.

17 SARAH DAY: That's it. We don't seem to be---.

18 SHIRLEY KEENE: We don't want to sell our gas.

19 SANDRA RIGGS: Well, that...that you need to talk to
20 your counsel about because that's a function of the statute
21 itself. Virginia has adopted what is called compulsory
22 pooling. And it says, "For the benefit of the Commonwealth
23 and its resources and all the people whose gas may be

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1 impacted by this well, we are going to create a scheme that
2 protects correlative rights," and it lays out in the statute
3 what that scheme is going to be and if you fall within this
4 drilling unit, you're entitled to notice of this hearing and
5 you're entitled to notice through the permitting if you fall
6 within the permitting guidelines, and the law sets out what
7 your rights are then once this pooling occurs, and that's a
8 right to make a claim against the gas that's produced from
9 the well and that's called protecting your correlative rights
10 to the gas. That's not the prerogative of this Board, that's
11 established by the General Assembly...the statutory scheme.

12 SHIRLEY KEENE: Well, he keeps saying we only own
13 like a tenth. We own the mineral rights under it all.

14 (Mr. Slaughter confers with Miss Keene.)

15 MARK SWARTZ: Just to focus your attention...I mean,
16 if you look at the well that's closest to their tract that
17 we're talking about, it's on somebody else's fee land.

18 SANDRA RIGGS: Right.

19 MARK SWARTZ: Okay. I mean, it...you know, it's on
20 a coal mountain, it's a fee tract.

21 BRYAN SLAUGHTER: But the fact that they are being
22 pooled that gives them a right to come before the Board.

23 MARK SWARTZ: Oh, no, no. I'm just talking about
24

1 the location, that's all I was---.

2 BILL HARRIS: Oh, yeah, certainly.

3 MASON BRENT: With regard to the mineral rights?

4 BRYAN SLAUGHTER: Right, right.

5 MARK SWARTZ: Right.

6 SHIRLEY KEENE: Well, this letter that they sent to
7 us, registered to us, says everyone that don't show up deemed
8 them their lease. But all Linkous Horn heirs do not deem
9 them anything.

10 SANDRA RIGGS: No, what that...what that references
11 is the statute and what the statute says is, they go out and
12 try to obtain a lease with you. If you choose not to lease,
13 then they can come before this Board and file their pooling
14 application. The law affords certain options to people who
15 are named in these pooling applications like yourself. One
16 is an option to voluntarily enter into an agreement with
17 them. You say you don't want to do that. Another is an
18 option to participate in the well and become an working
19 interest partner by paying in your proportionate share of the
20 costs of production. Another option would be to be carried.
21 That is to put no money up front, but be entitled to some
22 working interest once there is a payout. A third option is
23 to...is to be compulsory pooled in accordance with the terms

24

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1 established by the Board and then it says if you are offered
2 all of those elections and you choose to do nothing, you
3 stand silent, then you will be deemed to have leased your
4 interest pursuant to the Board's order. Now, the Board's
5 order won't issue until after the Board takes action, and an
6 order is drafted and it's entered and recorded and you are
7 mailed a copy, and at that point the order will say you have
8 thirty days from that time to make an election about what you
9 want to do with regard to your percentage interest within
10 this particular drilling unit. It's only then if you choose
11 not to act, that by law you are deemed to have leased.

12 BILL HARRIS: May I make just a comment?

13 MARY KEENE: Ma'am, could I say one more thing? Our
14 contracts---.

15 MASON BRENT: If you'd like to speak, could you
16 please...could you please come forward, please?

17 MARY KEENE: Our contract that we got is wrote up
18 that it's very hard for us to sign because we...you sign your
19 contract to them they've got all the rights and you don't
20 have nothing. I have a contract and it ain't fair.

21 SANDRA RIGGS: Well, that's only one...one of the
22 four options that you have.

23 MARY KEENE: And then they ain't---.

24

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1 SANDRA RIGGS: The Board order will afford you other
2 options that you make.

3 MARY KEENE: But they ain't even come to our homes
4 or nothing to discuss this. Every time we come, we have to
5 come before this Board. They ain't never tried to discuss it
6 with none of us to fix nothing except before this Board.

7 SANDRA RIGGS: Well, I...we're not a party to your
8 private negotiations. What the Board controls is the Board
9 order that will issue after this application has been heard.
10 If the Board chooses to approve the application, and that
11 will come to you, and it will contain within it also a lease
12 provision, which is the one-eighth...the bonus and the...that
13 they testified to.

14 MARY KEENE: See, I...the reason I'm here, I own my
15 property right there. I'm not...I mean, I'm not being smart
16 aleck. I'm just telling you that they ain't never come to
17 our homes to discuss nothing with us. They ain't...all we do
18 is get a paper to come here and half of us don't even get to
19 speak our thoughts what we are going through with all of us.
20 There's twenty-one of us and who gets to speak? We
21 don't...we don't all get to speak. We don't get to tell you
22 our part and the contract is made that if we sign it, see,
23 they've got all rights. We ain't got no rights and then I

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1 live on the property. I can't just jump up and move and go
2 start somewhere else and let them destroy it like they were
3 saying this act of God a while ago. In the contract, it says
4 act of God. Any act of God, they won't have to pay us
5 nothing. So, don't we have no rights.

6 SANDRA RIGGS: Well, unless I misunderstood, these
7 wells and the improvements they're talking about are not on
8 your property.

9 MARY KEENE: Yeah, it's on...I'm on the property and
10 I still own my part of the property with the mineral rights
11 is on.

12 SANDRA RIGGS: We're talking surface now.

13 MARY KEENE: Yeah, I'm a surface, but I'm not---.

14 SANDRA RIGGS: These wells are not proposed to be
15 drilled on your property. They're on---.

16 MARY KEENE: I'm not...but see, if they want to deep
17 mine, that they want to go in there and strip mine, if they
18 want...it's in the contract and if they want to do any kind
19 of mining after I've signed this for the gas, then I've
20 signed all rights away.

21 SANDRA RIGGS: Well, you're not being required to
22 sign that lease agreement. The Board is going to offer you
23 all of the statutory options that the law affords and you can
24

1 elect anyone of those options. There's no requirement by law
2 that you...that you sign any lease that they forward to you.

3 MARY KEENE: I know, but if we don't sign it, then
4 they put it into escrows.

5 SANDRA RIGGS: It would go in escrow even if you do
6 sign it because there are conflicting claims to the gas.

7 MARY KEENE: But still, we don't have any rights.

8 SANDRA RIGGS: Well, I don't know what rights you're
9 referring to, I guess.

10 MARY KEENE: On the rights that they should pay us
11 for the gas, the minerals and the oils, whatever they want to
12 buy off us, they ought to just go ahead and buy it off of us
13 and forget about all of this.

14 SANDRA RIGGS: Well, the way the law is structured,
15 once you prove your ownership, that would occur. The money
16 would be disbursed from escrow to you. Once, you establish
17 that you clearly own the gas...that you're entitled to the
18 proceeds under whichever option you elect.

19 MARY KEENE: Well, you'ens ain't proved to us that
20 you'ens own it because we have the deeds, too.

21 SANDRA RIGGS: The Board isn't claiming ownership of
22 it. The law sets up an escrow process until the ownership is
23 established.

24

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1 SARAH DAY: Then, would the heirs have access to the
2 escrow account?

3 SANDRA RIGGS: Yes.

4 SARAH DAY: Okay.

5 SHIRLEY KEENE: But if we prove we own it, why
6 should we only get one-eighth is what I'm saying.

7 SANDRA RIGGS: Well, you can get more if you choose
8 to participate in the well or you can come here if you can
9 establish a different lease term to this Board and the Board
10 chooses a different lease term...it's whatever...depends on
11 what option you select whether you get a one-eighth or not.
12 You're given several options under the law, which that is
13 only one.

14 SHIRLEY KEENE: But if we don't...if we don't do
15 anything and we prove that we own the coal and the gas, which
16 they have not proved to me they own it---.

17 MARY KEENE: No more than we've proved to them.

18 SANDRA RIGGS: Well, and the law says we don't know
19 who owns it---.

20 SHIRLEY KEENE: We only have---.

21 SANDRA RIGGS: ---and until you all work it out, it
22 will be in escrow and when you...when you're able to get a
23 Court, or whoever decides property issues and property
24

1 dispute situations, enters an order and you bring that to the
2 Board, then we'll disburse the money to whoever it is that
3 owns it. It's because there is this conflict in ownership
4 that the law is structured this way.

5 BILL HARRIS: If I might---.

6 SARAH DAY: Let me ask you one thing, I don't know
7 if this has got anything to do with the Board or not, but
8 about the right of way. We've got a permit right of way.
9 The Pocahontas bought it off of Arland Osborne and Beulah
10 ...well, I assume they bought it off of Willard and Beulah
11 Osborne.

12 MARY KEENE: When Beulah and Willard---.

13 SARAH DAY: But it was a permanent right of way for
14 the Horne heirs. Well, they've got a gate across
15 it...somebody has, and I'm asking are they allowed to use our
16 permanent right of way that was excepted down in our deeds?

17 SANDRA RIGGS: Well, now I don't...that's not before
18 the Board. Again, that's another property dispute that you
19 all have going and I don't...I don't know if through the
20 permitting process that was addressed or not or if---.

21 SARAH DAY: And this comes out for the Pine Ridge
22 and it's an old road that was excepted in our deeds.

23 SHIRLEY KEENE: That is the right of way that they
24

1 bought from Willard Osborne to come through to put the well
2 down.

3 CLYDE KING: The right of way is to who now?

4 SARAH DAY: To the Horne heirs.

5 CLYDE KING: I mean, from what company.

6 SARAH DAY: The Pocahontas bought it. We've got it
7 in...the Horne heirs has got it in their deeds that the Pine
8 Ridge road...it calls for the Pine Ridge Road. It's the old
9 road that we always used and it's been wrote down in the
10 deeds excepted for the Horne heirs and the Pocahontas
11 Partners bought it from the Arland Osborne where they're
12 talking about digging this well and Beulah Osborne. They've
13 paid them for the right of way.

14 MASON BRENT: I think your question to the Board
15 was, does any issue involving that right of way fall under
16 the purview of this Board?

17 SARAH DAY: Yes, that's what I'm asking.

18 MASON BRENT: And the answer to that is really no,
19 that it does not. Anything else, Mr. Slaughter?

20 BRYAN SLAUGHTER: Do you all have anything? Just
21 they wanted to be heard.

22 MASON BRENT: We're glad to hear them.

23 BILL HARRIS: If...can I just make a comment? I
24

1 don't want to get this all going again. A couple of things.
2 One is you mentioned the one-eighth and that's something I
3 guess I've mentioned before in Board meetings about why the
4 one-eighth and what...was that traditionally because like you
5 said, back a hundred years ago that was what was being paid
6 that is still being paid. It's sort of an industry standard
7 and I'm not saying that's okay. I think, you know...but I'm
8 sure the companies feel that it is.

9 SARAH DAY: I'm sure.

10 BILL HARRIS: But at the---.

11 MARK SWARTZ: Well, frankly, we'd like it to be
12 less. So, I mean, you know, there are two sides to every
13 story.

14 SARAH DAY: Well, that's true, they hog it all up.

15

16 BILL HARRIS: Right, right. I agree. The other
17 thing that happens with gas that's different with...with coal
18 is that if you own the resource...if someone next door
19 punches a hole in the ground...when I say next door, it may
20 be a half mile away or it may be...it probably won't be that
21 far, but they drill a hole in the ground to extract the gas.

22 This gas migrates from one place to another and the
23 assumption is here is that even if you are on a corner and

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1 the well is 500 or 600 feet...1000 feet that it will probably
2 extract your gas as well. So, this whole process...the State
3 of Virginia has encouraged the production of the gas and
4 that's the basis for all of this. The state says we want to
5 produce the gas. We want to get it out of the ground and
6 sell it to, you know, get the tax revenues and to get the
7 other money, you know, to pay citizens as well. But the
8 state has said that...has empowered the Board to just insure
9 that people are financially...that this is taken care of in
10 escrow and whatever, people who are conflicting claimants of
11 the gas. But what happens is the gas is pumped out. Your
12 gas goes along with theirs and that's not a guarantee, it
13 probably will be. But, again, all of this is in a pool. So,
14 the...I guess, I'm trying to address about three or four
15 different things that I heard you bring up. But the state
16 is...the legislators years ago established that they want to
17 promote the development of gas resources in the state. So,
18 that's why the Board established, in order to just oversee
19 the...that development. Now, the one-eighth is between you
20 all and the company. You know, I...you know, even though
21 they say that they would like for it to be less, but I, you
22 know, I'm sure that, you know, you could argue the other
23 point, that it should be more or whatever. But...but that's

24

--

1 what the escrow account is for is to put money away for
2 people who have ownership or claim ownership and there are
3 several other people who claim ownership. We can't decide
4 that issue. The courts have to decide that issue. But once
5 that's decided, then that escrow money is released to the
6 proper people.

7 MAX LEWIS: You could come back to the Board here
8 and if there are nobody that rejects to it, they can go ahead
9 and pay her...can't they?

10 BILL HARRIS: Yeah, we've had---.

11 SANDRA RIGGS: Well, there will be...there will be
12 some applications later today where folks have struck a
13 settlement agreement, where the coal owner and the gas and
14 oil owner have reached an agreement to split the proceeds
15 fifty/fifty in order to resolve that conflict and go on and
16 get their money out of escrow, which is another thing that
17 lately the Board has been seeing, is just settlements of the
18 escrow between the conflicting claimants. The other option
19 that statute gives is a Court order. So, either one of two
20 things have to happen to pull the money out of escrow, you
21 have to reach a settlement with your conflicting complainant
22 or you have to get your property issues decided in Court and
23 bring the order here in order to withdraw the money. Those

24

--

1 are the two options.

2 SARAH DAY: Well, I know you don't have time to
3 spend a lot of time, but the Pocahontas...these gas companies
4 is getting well...I mean, this is a piece in the paper how
5 far they're sending their pipeline and how much they're
6 selling, but then when they go to the Board, why they say it
7 takes all of that for the well. And the people...a lot of
8 people is getting their lands tore up and just getting left
9 out of it. And I feel like, you know, that's what the Board
10 is for is to see that people gets a fair share, that the big
11 companies don't just rip them off, but they go ahead and get
12 their permit and then it seems like the people gets nothing.
13 And---.

14 MASON BRENT: Well, it is the Board's responsibility
15 to see that people get their fair share, but only to the
16 extent provided for by the statutes.

17 (A Horne heir asks if the Board members would like
18 to read the article from the paper.)

19 SHIRLEY KEENE: And we are concerned about our
20 homes, our water, because I cannot afford to just pick up and
21 leave. I can't do that. Buchanan County is an eyesore...a
22 complete eyesore and people's homes are being tore up. Their
23 well pumps are being blowed out of their wells. One man got
24

1 burned almost to death and things like this that really
2 concern me because this is my neighborhood. This is my home,
3 I was born and raised there. And it's not just an eighth
4 percent of the gas, it is the damage that is being done.

5 SARAH DAY: And it is not a fair company.

6 SHIRLEY KEENE: And no...and that is our concern. I
7 mean, things that are happening...and that's why I suggested
8 that somebody from the Board...you live there, you know what
9 it looks like.

10 MAX LEWIS: Uh-huh.

11 SHIRLEY KEENE: And see the damage that is being
12 done and make them take care of all of this damage out of
13 their share, not ours.

14 BRYAN SLAUGHTER: And that essentially, I mean, they
15 really...for this proceeding today, it's only according to
16 her, one percent or whatever the Linkous Hornes have on this
17 one tract, but their anger is more than that. It goes to
18 people they feel that they're destroying their land and they
19 could be destroying the water and just the case you had
20 before this with the sort of run off that occurs because they
21 can't build a real road. It's a dirt road and there's lot of
22 environment to the...damage to the environment because of
23 this and they feel it's not right.

24

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1 MASON BRENT: And this Board is as concerned with
2 those issues as anybody.

3 BRYAN SLAUGHTER: But we realize that.

4 MASON BRENT: But I would hope, Mr. Slaughter, that
5 you knowing the law and their avenues of recourse would help
6 direct them to the areas where they can get some relief for
7 their concerns.

8 BRYAN SLAUGHTER: Yes, I'll try.

9 SHIRLEY KEENE: Yeah, we're pleased with him, that's
10 the reason he is with us.

11 MASON BRENT: Anything else, Mr. Slaughter?

12 BRYAN SLAUGHTER: No, we appreciate the Board's
13 time. Thank you very much.

14 SHIRLEY KEENE: Thank you for hearing our comments.

15 MASON BRENT: Thank you for coming.

16 MAX LEWIS: Thank you.

17 MASON BRENT: We appreciate it. Any questions from
18 the Board on this application?

19 (No audible response.)

20 SANDRA RIGGS: This newspaper article, by the way,
21 is about Virginia Gas Companies pipeline which is a utility
22 distribution company, not a gas producer. It's a different
23 issue than what we have before us here today.

24

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1 BILL HARRIS: I believe you need to go to the State
2 Corporation Commission.
3 BRYAN SLAUGHTER: Yeah (inaudible).
4 MASON BRENT: Are there any questions from the Board
5 on this application?
6 (No audible response.)
7 MASON BRENT: Hearing no questions, do I have a
8 motion?
9 BILL HARRIS: I move for approval of the application
10 as presented.
11 CLYDE KING: Second.
12 MASON BRENT: Okay. You have a motion and a second.
13 Is there any further discussion?
14 (No audible response.)
15 MASON BRENT: There being no discussion. All favor
16 signify by saying aye.
17 (All members indicate in the affirmative.)
18 MASON BRENT: Opposed, no.
19 (No audible response.)
20 MASON BRENT: No nos. The motion is carried.
21 CLYDE KING: Mr. Chairman, I...the lady that made
22 the comment about blowing their pumps out of the ground.
23 Hopefully, when the gas is ventilated into pipelines that
24

1 will cease to happen. I hope. Is that not correct, Les?
2 Pressure of the gas being---.

3 SANDRA RIGGS: That's is natural pressure within---.

4 CLYDE KING: That's a natural pressure.

5 SANDRA RIGGS: ---a water well. Gas coming up in a
6 water well, is that the case that you're talking about? That
7 was not a gas well. It was a water well.

8 CLYDE KING: Oh, that's gas...natural gas.

9 SANDRA RIGGS: With gas coming out.

10 CLYDE KING: Yeah.

11 SHIRLEY KEENE: Excuse me. They are not just
12 pumping for coalbed methane. They're pumping for natural
13 gas, also.

14 CLYDE KING: These are natural...these are methane
15 wells, these are.

16 SHIRLEY KEENE: Well, the methane gas is what come
17 up through the well and burnt the man really bad.

18 SANDRA RIGGS: But it was a water well that you're
19 referring to.

20 MAX LEWIS: Yeah.

21 SHIRLEY KEENE: Right. See, it's putting pressure
22 on and the pressure is pushing the gas through the wells
23 where our water is coming through and it's blowing up pump
24

1 houses and it's blow...it blew up one man. It blew him
2 out and he lives in Vansant and it burnt him really bad.

3 SANDRA RIGGS: Yeah, I'm familiar with that case.

4 SHIRLEY KEENE: And see, things like this concerns
5 me because this is my home. It's my family's home.

6 CLYDE KING: It concerns us, too.

7 SHIRLEY KEENE: And our neighbors homes, and we'd
8 like to do something to stop some of it, you know, it might
9 save somebody's life because the man at Vansant could have
10 got killed. There's a number of issues that need to be
11 checked out.

12 BRYAN SLAUGHTER: We are trying to find the proper
13 place to take them to. Thank you.

14 MASON BRENT: What's the Board's pleasure? Would
15 you like to go through the next couple of items and then
16 break for lunch?

17 (All indicate in the affirmative.)

18 MASON BRENT: Will that do you?

19 MARK SWARTZ: I can consolidate those two. You
20 probably need to call both of them, but they're next to each
21 other. I can put them together and go pretty quickly.

22 MAX LEWIS: Number five and number six?

23 CLYDE KING: Okay. Number four and five.

24

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1 BILL HARRIS: Five and six.

2 MAX LEWIS: Number five and six.

3 MASON BRENT: All right. The Board will call agenda

4 item number five. The Virginia Gas and Oil Board will

5 consider a petition from Pocahontas Gas Partnership under

6 Section 45.1-361.22 for pooling of a Coalbed Methane Unit

7 identified as T-37 located in the Oakwood Coalbed Methane Gas

8 Field I, in the Garden District, Jewell Ridge Quadrangle,

9 Buchanan County, Virginia. This is docket number VGOB-98-

10 04/21-0650. At the same time, we will consider a petition

11 from Pocahontas Gas Partnership under Section 45.1-361.22 for

12 pooling of a Coalbed Methane Unit identified as U-37 located

13 in the Oakwood Coalbed Methane Gas Field I, in the Garden

14 District, Jewell Ridge Quadrangle, Buchanan County, Virginia.

15 This is docket number VGOB-98-04/21-0651. I'd ask that all

16 interested parties come before the Board and introduce

17 yourself.

18 MARK SWARTZ: Mark Swartz and Les Arrington on both.

19 MASON BRENT: Anyone else interested in these docket

20 items?

21 (No audible response.)

22 MASON BRENT: Let the record reflect there are no

23 other interested parties. You may proceed.

24

1

2

3

LESLIE K. ARRINGTON

4 having been duly sworn, was examined and testified as
5 follows:

6

DIRECT EXAMINATION

7 QUESTIONS BY MR. SWARTZ:

8 Q. Les, you want to state your full name,
9 please?

10 A. Leslie K. Arrington.

11 Q. Who do you work for?

12 A. Consol.

13 Q. Who is the applicant with regard to both of
14 these pooling applications?

15 A. Pocahontas Gas Partnership.

16 Q. And is Pocahontas Gas Partnership requesting
17 that Consol be designated operator in each of the units?

18 A. Yes, we are.

19 Q. Pocahontas Gas Partnership is a Partnership
20 composed of Consolidation Coal Company and Conaco, Inc.?

21 A. Yes, it is.

22 Q. Is Pocahontas Gas Partnership authorized to
23 do business in the Commonwealth? Is it registered with the

24

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1 DMME and does it have a blanket bond on file?

2 A. Yes, it does.

3 Q. Now, with regard to the people that you're
4 seeking pool in T-37 and U-37, do you want to dismiss a
5 number of the respondents in T-37?

6 A. Yes, we do.

7 Q. Okay. To make it simple, could I say that
8 we want to dismiss everyone except Michael Counts and the
9 collective reference to the Albert Ball heirs, devisees,
10 successors or assigns?

11 A. Yes, we do. However, my revised Exhibit B-3
12 did not include the Albert Ball successors and assigns.

13 Q. Okay. So, the only respondents on T-37 that
14 we want to proceed with regard to are Mitchell Counts and
15 Albert Ball heirs, devisees, successors or assigns as a group
16 because the people that we've been able to identify probably
17 don't account for that entire interest, correct?

18 A. They may not, but however, we do hope that
19 we've leased a 100 percent of the interest.

20 Q. I understand. Okay. In regard to U-37
21 there's only one respondent, a Samuel Glen Sproles, and we
22 want to proceed with regard to Mr. Sproles?

23 A. That's correct.

24

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1 SANDRA RIGGS: So, it's my understanding that you'll
2 submit a revised Exhibit B-3 that will add back in the Albert
3 Ball heirs?

4 MARK SWARTZ: Right, on T-37.

5 Q. Both of these units are eighty acre units?

6 A. Yes, they are.

7 Q. You're seeking to pool both of them under
8 the Oakwood I rules which would apply to frac wells?

9 A. Yes.

10 Q. And you're seeking to pool and produce from
11 the Tiller and below?

12 A. Yes, we are.

13 Q. Or actually, I should say from below the
14 Tiller?

15 A. From below the Tiller, that's correct.

16 Q. Are the...are the wells here associated with
17 mine development?

18 A. Yes, they are.

19 Q. And is it...are they both...are all of these
20 wells above the projections for the Buchanan Number One mine?

21 A. Yes, they are.

22 Q. And in T-37, we're showing one well---?

23 A. That's correct.

24

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1 Q. ---which is clearly within the drilling
2 units or drilling window?

3 A. Yes.

4 Q. And in U-37, how many wells are we showing?

5 A. Two.

6 Q. And are both those also within the drilling
7 window?

8 A. Yes, they are.

9 Q. So, we don't need an exception with regard
10 to any of these wells?

11 A. That's correct.

12 Q. With regard to T-37...I'm sorry. With
13 regard to U-37 where there are two wells projected, how many
14 well...the costs of how many wells will be allocated to
15 people who might produce?

16 A. Only one.

17 Q. What is the estimate with regard U-37?

18 A. U-37, the estimate costs is two hundred and
19 forty-six thousand seven hundred and thirty dollars and forty
20 cents (\$246,730.40) with the approximate depth of 2292 feet.

21 Q. And again, that's the approximate depth of
22 the Pocahontas Number Three seam?

23 A. Yes, it is.

24

1 Q. And you prepared these estimates on March
2 19th, '98?
3 A. Yes, I did.
4 Q. I'm sorry. March---?
5 A. Right.
6 Q. ---yeah, March 19th, '98. The cost estimate
7 with regard to T-37 is what amount?
8 A. Two hundred and forty-six thousand eight
9 hundred and twenty-six dollars and fifty cents (\$246,826.50).
10 Q. And the estimated depth there is?
11 A. 2268 feet.
12 Q. And again, you prepared that estimate on
13 March 19, '98?
14 A. Yes, I did.
15 Q. Did you mail to all of the respondents
16 listed in both of the notices?
17 A. Yes, I did.
18 Q. And have you filed today the proof of
19 mailing or certification of mailing and related exhibits?
20 A. Yes, I have.
21 Q. Did you also publish?
22 A. Yes, we did. In the Bluefield Daily
23 Telegraph on March 31st, 1998.

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1 Q. 21st or 31st?
2 A. 31st, I'm sorry.
3 Q. Okay. And what was published?
4 A. The notice of hearing.
5 Q. Okay. And have you filed a certificate of
6 publication with regard to both those publications?
7 A. Yes, I have.
8 Q. Okay. And that's in the packet of exhibits?
9 A. Yes, it is.
10 Q. With regard to T-37, I direct your attention
11 to revised Exhibit A, page two, and that shows the Mitchell
12 Counts' interest as the only interest to be pooled?
13 A. Yes, it does.
14 Q. The 1.5625 percent of the oil and gas
15 interest?
16 A. Yes, it does.
17 Q. And you've obtained leases from a 100
18 percent of the coal owner's interest in coalbed methane?
19 A. Yes, we have.
20 Q. And from the Albert Ball heirs that you've
21 been able to identify, correct?
22 A. Uh-huh...yes.
23 Q. And so the outstanding oil and gas interest,
24

1 although the revised Exhibit that number will change because
2 you'll be adding back in the Ball heirs, correct?

3 A. The revised Exhibit A, page two, reflects
4 the interest of the Albert Ball heirs that we have leased and
5 hopefully there is no outstanding interest.

6 Q. Okay. Okay. So, that will remain the
7 same---?

8 A. Yes.

9 Q. ---it does not need to be revised?

10 A. That's correct.

11 Q. Okay. With regard to U-37, A, page two in
12 the original application demonstrates that you've obtained
13 CBM leases from a 100 percent of the coal owners?

14 A. Yes, it does.

15 Q. That you have leased 99.85 percent of the
16 coalbed methane interest of the oil and gas owners?

17 A. That's correct, we have.

18 Q. And that the open unleased interest of Mr.
19 Sproles is .15 percent?

20 A. Of the oil and gas interest, that's correct.

21 Q. All right. And that's what you're seeking
22 to pool in...with regard to the application in U-37?

23 A. That's correct.

24

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1 Q. With regard to the leases that you've
2 obtained in one instance some 98 percent of the acreage...the
3 oil and gas acreage has been leased and with regard to the
4 other some 99 percent, what are the term...the basic terms
5 that you have offered?

6 A. Our standard coalbed methane leases are
7 dollar per acre rental, one-eighth royalty with a five year
8 term. The dollar per acre rental is payable until production
9 begins and then a one-eighth royalty.

10 Q. Now, in...with regard to both of these
11 applications, Exhibit B-3 only sets forth one percentage,
12 correct?

13 A. That's correct, it does.

14 Q. But that percentage for each respondent
15 would be the percentage that would be used to calculate
16 carried interest, participation interest or royalty interest,
17 correct?

18 A. That's correct.

19 Q. Okay. Is it your opinion that the
20 development plans disclosed by the mine plan and by these two
21 pooling applications represent a reasonable method to
22 develop, produce and capture the coalbed methane under these
23 units and sell those resources and distribute the revenue

24

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1 toward...to the working interest owners and to the royalty
2 owners?

3 A. Yes, we do.

4 Q. And would you recommend these methods as
5 a...to the Board and recommend that they pool these two units
6 so that the contemplated operations can proceed?

7 A. Yes, we do.

8 Q. That's all I have.

9 MASON BRENT: Any questions from the Board?

10 CLYDE KING: Are we to do these separately, Mr.
11 Chairman?

12 MASON BRENT: Yes, yes.

13 CLYDE KING: Okay. I move we approve number 5.

14 MASON BRENT: Which is VGOB-98-04/21-0650?

15 CLYDE KING: Yes, sir.

16 BILL HARRIS: Second.

17 MASON BRENT: I have a second. Any further
18 discussions?

19 (No audible response.)

20 MASON BRENT: All in favor signify by saying aye?

21 (All members indicate in the affirmative.)

22 MASON BRENT: Opposed?

23 (No audible response.)

24

1 MASON BRENT: There being no opposition, the motion
2 is carried. Do we have a motion with regard to VGOB-98-
3 04/21-0651?
4 BILL HARRIS: Mr. Chair, I move for approval of that
5 item, also?
6 MASON BRENT: Mr. Harris has moved. Is there a
7 second?
8 MAX LEWIS: I second it.
9 MASON BRENT: We have a second. Any further
10 discussion?
11 (No audible response.)
12 MASON BRENT: There being no discussion. All in
13 favor signify by saying aye.
14 (All members indicate in the affirmative.)
15 MASON BRENT: Opposed?
16 (No audible response.)
17 MASON BRENT: No opposition. The motion is carried.
18 MARK SWARTZ: Thank you very much.
19 MASON BRENT: Thank you. It's twenty minutes after
20 twelve, what's the Board's pleasure. Would you like to go
21 for lunch?
22 BILL HARRIS: What do we look like?
23 MASON BRENT: We look like a full afternoon.

24

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1 JILL HARRISON: We won't take very long at all.

2 SANDRA RIGGS: They're withdrawing funds on Torch.

3 MASON BRENT: Would you like to hear some of them?

4 LESLIE K. ARRINGTON: You've only got ten.

5 JILL HARRISON: Les, you're through, go on. Don't

6 cause problems. No, we'll...whatever the Board decides is

7 fine. I just wanted to let you all know I didn't think we'd

8 take very long.

9 BILL HARRIS: Whose...are they next?

10 SANDRA RIGGS: They're withdrawing funds like we had

11 last time, Torch.

12 TOM FULMER: I think some of them...of think

13 everyone of those...the next ones is going to be all the

14 same.

15 SANDRA RIGGS: Yeah.

16 TOM FULMER: She can consolidate all---.

17 CLYDE KING: If you consolidated all of---.

18 TOM FULMER: You can consolidate most of them,

19 right?

20 JILL HARRISON: Oh, definitely.

21 TOM FULMER: Yeah.

22 MASON BRENT: What's your recommend...I didn't

23 understand your recommendation?

24

1 SANDRA RIGGS: We're going ahead with Torch.
2 MASON BRENT: Go ahead and hear it?
3 TOM FULMER: Yeah.
4 MASON BRENT: Oh, you said Torch. I thought you
5 said to lunch.
6 SANDRA RIGGS: No.
7 TOM FULMER: Well, I suggested going to lunch, but I
8 mean, you know, it's whatever the Board's pleasure.
9 JILL HARRISON: Yeah, whatever you all want to do is
10 fine with us.
11 TOM FULMER: I would like to know...nobody from EREC
12 is here.
13 JILL HARRISON: They left to go to lunch.
14 CLYDE KING: Oh, they've got to come back?
15 SANDRA RIGGS: Yeah.
16 TOM FULMER: Well, the thing is they were going to
17 continue some, too, I thought.
18 MASON BRENT: Let's go ahead and hear these.
19 BILL HARRIS: Yeah, that's...I think---.
20 MASON BRENT: Is everybody's stomach okay for that?
21 MAX LEWIS: Yeah.
22 CLYDE KING: Can I have a two minute break?
23 MASON BRENT: Yes.
24
~

1 (Off record.)

2 JILL HARRISON: I did things a little differently

3 this time. Two ways that I hope to try to save time.

4 MASON BRENT: Let me...let me get straight on

5 which---.

6 BILL HARRIS: Yeah, we ought to call it.

7 MASON BRENT: ---cases. You want to call items

8 fourteen through nineteen, is that correct?

9 JILL HARRISON: Yes, sir.

10 MASON BRENT: Let me...let me call these items then.

11 JILL HARRISON: All right.

12 MASON BRENT: All right. The Board will now

13 consider a petition from Torch Energy Advisors, Incorporated,

14 Consolidation Coal Company and Pocahontas Gas Partnership for

15 Board orders issued for unit NELW9, located in Buchanan

16 County, Virginia, to amend orders related to this unit

17 concerning escrowing of funds. This is docket number VGOB-

18 91-12/17-0169-01.

19 We will also consider a petition from Torch Energy

20 Advisors, Incorporated and Pocahontas Gas Partnership for

21 Board orders issued for unit SLW7, located in Buchanan

22 County, Virginia, to amend orders related to this unit

23 concerning escrowing of funds. This is docket number GOB-92-

24

1 02/18-0185-01.

2 We will also consider a petition from Torch Energy
3 Advisors, Incorporated, Consolidation Coal Company and
4 Pocahontas Gas Partnership for Board orders issued for unit
5 SLW5, located in Buchanan County, Virginia, to amend orders
6 related to this unit concerning escrowing of funds. This is
7 docket number GOB-92-02/18-0183-01.

8 We will also consider a petition from Torch Energy
9 Advisors, Incorporated and Pocahontas Gas Partnership for
10 Board orders issued for unit SLW6, located in Buchanan
11 County, Virginia, to amend orders related to this unit
12 concerning escrowing of funds. This is docket number GOB-92-
13 02/18-0184-01.

14 We will also consider a petition from Torch Energy
15 Advisors, Incorporated and Pocahontas Gas Partnership for
16 Board orders issued for unit SLW8, located in Buchanan
17 County, Virginia, to amend orders related to this unit
18 concerning escrowing of funds. This is docket number GOB-92-
19 04/21-0216-01.

20 And finally we will consider a petition from Torch
21 Energy Advisors Incorporated and Pocahontas Gas Partnership
22 for Board orders issued for unit SLW9, located in Buchanan
23 County, Virginia, to amend orders related to this unit

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1 concerning escrowing of funds. This is docket number VGOB-
2 92/04/21-0217-01. Would all interested parties that want to
3 participate, please come before the Board now and introduce
4 yourself. Miss Harrison.

5 JILL HARRISON: Mr. Chairman, my name is Jill
6 Harrison. I practice here in Abingdon with Penn Stuart.
7 Today I'm representing Hugh McRae, Torch Energy and depending
8 on the applications, Pocahontas Gas Partnership and/or
9 Consolidation Coal Company and I have with me as my witness
10 Mr. Bob Looney.

11 MASON BRENT: Let the record reflect there are no
12 other interested parties before the Board.

13 JILL HARRISON: Mrs. Wade, do you want to...Mrs.
14 Wade and her husband own an interest in four of the units
15 that are being considered today and they came today. We
16 talked about their entry into a voluntary agreement with
17 their conflicting owner, which is Hugh McRae Land Trust. So,
18 this is Kathleen Wade and this Mr. Thurman Wade, who is in
19 the blue jacket and then Miss Massey...this is Evelyn Massey,
20 and I'm sorry...?

21 GAIL HENDERSON: Gail Henderson.

22 JILL HARRISON: Gail Henderson. They are
23 representatives of the Ernest Addison heirs, who are in the
24

1 south long wall five and south long wall six units and we had
2 also talked about the possibility of a voluntary agreement.
3 MASON BRENT: Do they wish to participate in these
4 hearings?
5 JILL HARRISON: That's...I don't know. That's what
6 I was---.
7 KATHLEEN WADE: Yeah.
8 JILL HARRISON: Okay.
9 THURMAN WADE: Mr. Mutter has done gone, isn't he?
10 JILL HARRISON: I believe he has. Another gentlemen
11 was here earlier, but I talked to him also and he---.
12 KATHLEEN WADE: He's left.
13 JILL HARRISON: ---said send me the stuff and then
14 he left.
15 MASON BRENT: They would just like to observe the
16 proceedings?
17 JILL HARRISON: Yes, that's my understanding.
18 MASON BRENT: That's fine.
19 JILL HARRISON: Thank you all very much.
20 KATHLEEN WADE: Thank you.
21 JILL HARRISON: Mr. Chairman, I've done things a
22 little differently this time, hopefully to try to save time
23 and confusion also. In the front of each of the folders that
24

1 you've received, the time line that I've previously gotten up
2 and gone through with you, I've put it in each of the folders
3 so that you'll have that and I won't...since we're
4 consolidating I won't go through each individual one at this
5 time, but it is in there if you would like to see it. And
6 I've also added an Exhibit Eight to...and this you probably
7 will want to look at as we go through each one on the
8 interest. I've tried to identified within the supplemental
9 orders and the other order the interests that we're talking
10 about so it will save some scrambling of pages in trying to
11 locate things. And what I will do is ask Mr. Looney first
12 the general questions that apply to all of the units and then
13 I'll go unit by unit and break down for you the interests
14 that we're looking at, if that's all right?

15 MASON BRENT: We can swear the witness.

16

17 BOBBY J. LOONEY

18 having been duly sworn, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 QUESTIONS BY MISS HARRISON:

22 Q. Would you state your full name for the
23 record, please?

24

--

1 A. Bobby J. Looney.

2 Q. And Mr. Looney, do you perform work for
3 consolidation coal company and Pocahontas Gas Partnership?

4 A. Yes, I do.

5 Q. And in your responsibilities for those two
6 companies, is it included that you are responsible for
7 maintaining information about ownership interests within the
8 various units that we will talk about today?

9 A. Yes.

10 Q. So you are the keeper of those records?

11 A. Right.

12 Q. And on tracts that we're looking at today,
13 and we will break those down for the Board tract by tract in
14 just a moment, but on the oil and gas side, do either
15 Consolidation Coal Company and/or Pocahontas Gas Partnership
16 claim the oil and gas on those tracts?

17 A. Yes.

18 Q. And on these particular tracts, does Hugh
19 McRae Land Trust claim ownership of the coal underlying all
20 of these tracts?

21 A. Yes.

22 Q. And to your knowledge, has Hugh McRae Land
23 Trust conveyed its interest in the royalty related to the
24

1 production of the coalbed methane gas from these tracts to
2 Torch Energy Advisors, Incorporated?

3 A. Yes.

4 Q. And if you would look at Exhibit Four, which
5 is the same in all of the books, and to your knowledge, is
6 this the instrument by which Hugh McRae conveyed that
7 interest to Torch Energy?

8 A. Yes, that's it.

9 Q. And have Consolidation Coal Company,
10 Pocahontas Gas Partnership, Hugh McRae Land Trust and Torch
11 Energy Advisors entered into a voluntary agreement for...that
12 resolves the conflicting claim to the coalbed methane and set
13 forth how royalties attributable to these...this interest are
14 to be paid?

15 A. Yes.

16 Q. And if you would look at Exhibit Three,
17 which is the same in all the books, is the agreement that is
18 attached to Mr. Slage's affidavit, the agreement that was
19 entered into by...in some instances Consol and Hugh McRae and
20 Torch, and then in some instances Pocahontas Gas Partnership?

21 A. Yes, it is.

22 Q. All right.

23 A. Uh-huh.

24

--

1 Q. And based on this agreement, are
2 Consolidation Coal Company and Pocahontas Gas Partnership
3 asking the Board to amend its previous orders to show that
4 these entities are no longer conflicting claimants with
5 regard to these tracts in the coalbed methane?

6 A. Yes.

7 Q. And are Consolidation Coal Company and
8 Pocahontas Gas Partnership also asking the Board to enter an
9 order directing the escrow agent to...and the operator to
10 account for the funds that have been deposited on behalf of
11 the unit and to pay those funds to Consol, PGP and Torch in
12 accordance with the agreement that's in the book?

13 A. Yes.

14 JILL HARRISON: And with regard to the accounting,
15 we've discussed this at last month's hearing, but basically
16 what the entities are looking for is a statement from the
17 escrow agent that indicates the amount they hold attributable
18 to this unit and the operator will provide us with the
19 ownership percentage within the unit and the percentage of
20 the funds held in escrow that are attributable to these
21 tracts. If you all don't have any questions about that
22 portion of it, I'll go on to the individual tracts.

23 MASON BRENT: I've got one question.

24

--

1 JILL HARRISON: Yes.

2 MASON BRENT: I noticed that on the bill of sale
3 here that it has not been executed. The copy we have has not
4 been---.

5 JILL HARRISON: There should be an execution page.

6 MASON BRENT: Well, I'm looking at one page that has
7 not been executed. Are you using two different pages for the
8 different parties to execute them?

9 JILL HARRISON: Mine...mine---.

10 BOBBY J. LOONEY: There were two different pages for
11 it.

12 JILL HARRISON: Yeah, both of mine...I have one page
13 that is executed by Hugh McRae---.

14 MASON BRENT: Right, right, Hugh McRae.

15 JILL HARRISON: ---and then two pages later is
16 executed by Mr. Slage.

17 MASON BRENT: Right, right.

18 JILL HARRISON: I'm sorry, if you didn't get that
19 page, I apologize.

20 MASON BRENT: No, I got it. I just didn't get to it
21 till after you started your explanation.

22 JILL HARRISON: Oh, I'm sorry. Oh, I'm sorry.

23 BOBBY J. LOONEY: There's a page between them.

24

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1 JILL HARRISON: I was going to say well, you may not
2 have the page because of my office and I'm sorry for that.
3 All right.

4 MASON BRENT: Any questions so far from the Board?
5 (No audible response.)

6 JILL HARRISON: All right. I'll move then through
7 each unit and identify the interests that are the subject of
8 today. And the first unit that we have is the northeast long
9 wall nine unit and if you'll look at Exhibit Eight.

10 Q. And Mr. Looney, Exhibit Eight in your book,
11 is this the tract with which PGP, Consol and Hugh McRae have
12 entered into this agreement to resolve this conflicting
13 claim?

14 A. Yes.

15 Q. And the fifty-three acres are not identified
16 in one of the...in any of the supplemental orders, they were
17 identified in the original application as being owned...the
18 coal by Hugh McRae and the oil and gas by Consol, and since
19 that time, has Consol conveyed a percentage of that ownership
20 to Pocahontas Gas Partnership?

21 A. Yes, they have. That's through an inter-
22 company document that was done by the two companies.

23 Q. And that's referred to as Tract Eleven in
24

1 this unit?

2 A. (No audible response.)

3 Q. The next unit is the south long wall...make
4 sure I'm following the document...yes, south long wall seven.
5 And Mr. Looney, if you will look at Exhibit Eight, are these
6 the tracts as identified in the supplemental order which
7 Pocahontas Gas Partnership, Consol and Hugh McRae wish to
8 address the conflicting claims?

9 A. Yes.

10 Q. And are these three tracts presently owned
11 as shown in the application, I guess, as follows, that all of
12 those interests are owned by PGP, 11.4 percent?

13 A. Yes.

14 Q. Those three tracts that are shown on Exhibit
15 Eight, the percentages, add up to the 11.4 percent, which is
16 shown in the application?

17 A. (No audible response.)

18 SANDRA RIGGS: Let me see if I follow this
19 correctly.

20 JILL HARRISON: Okay.

21 SANDRA RIGGS: Now, the process that the Board has
22 is that it enters a pooling order which has attached to it
23 certain exhibits that outline the claimants.

24

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1 JILL HARRISON: Uh-huh.

2 SANDRA RIGGS: We have a B-3 that has the list of
3 unleased owner/claimants and a B-2 which are dismissals and
4 that's all that's attached.

5 JILL HARRISON: Right.

6 SANDRA RIGGS: When I look at your Exhibit A, tie me
7 back to the tract we're talking about.

8 JILL HARRISON: All right. On Exhibit Number One,
9 if you look at the 73.775 acre tract, and under Exhibit
10 Number One you have an Exhibit E that's the very last full
11 document toward the end of that Exhibit Number One, and it's
12 headed Conflicting Ownership Claimants. All right. At the
13 bottom of that first page is a 73.775 acre tract.

14 BOBBY J. LOONEY: This is the coal owner.

15 JILL HARRISON: Yeah, and the coal owner is shown as
16 Hugh McRae.

17 BILL HARRIS: I don't see Exhibit E. I guess,
18 I'm---?

19 JILL HARRISON: I'm sorry.

20 BILL HARRIS: ---we're in the---?

21 JILL HARRISON: Number One.

22 BILL HARRIS: ---NELW9, right?

23 JILL HARRISON: No, now we're on south long wall

24

~

1 seven.

2 BILL HARRIS: That's what happened. Okay.

3 JILL HARRISON: It should be the second book in your
4 stack.

5 BILL HARRIS: Okay.

6 SANDRA RIGGS: All right. That might explain it.

7 BILL HARRIS: Oh, yeah. Okay.

8 CLYDE KING: All right.

9 JILL HARRISON: Would you like for me to go back to
10 the northeast long wall nine?

11 SANDRA RIGGS: I think it helps---.

12 BILL HARRIS: Yeah, I think...yeah, somehow there.

13 SANDRA RIGGS: ---if we...if in each one, we trace
14 it back to the original poolings.

15 JILL HARRISON: Okay. That's...I'm sorry. I went
16 too fast because that's what I did. I apologize, I went too
17 fast.

18 SANDRA RIGGS: Okay.

19 MASON BRENT: You gave us an opportunity.

20 JILL HARRISON: I'm sorry.

21 SANDRA RIGGS: We're slow up here today. One is the
22 application. Two is the pooling order.

23 JILL HARRISON: Yes, ma'am.

24

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1 SANDRA RIGGS: So, I'm looking to tie it back to
2 what's of record, which would be the pooling orders.
3 JILL HARRISON: All right. On northeast long wall
4 nine---.
5 SANDRA RIGGS: Okay.
6 JILL HARRISON: ---this tract is not listed in the
7 pooling orders.
8 SANDRA RIGGS: Okay.
9 JILL HARRISON: That's what I'm...it is shown on the
10 original application as a conflicting tract. It was
11 owned...the coal was owned by Hugh McRae Land Trust and all
12 of the oil and gas which was originally owned by Consol---.
13 SANDRA RIGGS: Has it ever been picked up through a
14 supplemental order anywhere in the public record as a
15 conflicting escrow claim?
16 JILL HARRISON: Not that I'm aware of. And I---.
17 SANDRA RIGGS: So, we will need an amended
18 supplemental order in order to get it of record so that we
19 can then deal with it through the Board's order.
20 JILL HARRISON: I spoke with to Mr. Looney about
21 this matter and there's some history here that's involved---.
22 SANDRA RIGGS: There is.
23 JILL HARRISON: ---in how this came about. The
24
25

1 first orders that were originally entered under these types
2 of applications did not require interests that were
3 conflicting, but leased, to be included on those exhibits.
4 Orders have been entered and...that's why we have this
5 situation. Orders have been entered and entered and entered
6 that came out of the Attorney General's office that do
7 not---.

8 SANDRA RIGGS: Well, the company has taken the
9 position that the parties, through their voluntary leases,
10 waived their right to notice and to be included in the
11 pooling.

12 JILL HARRISON: And that's why they weren't included
13 on these orders.

14 SANDRA RIGGS: Right. But---.

15 JILL HARRISON: So, it wasn't that we were
16 avoiding---.

17 SANDRA RIGGS: ---they were escrowed anyway, which
18 makes a real problem---.

19 JILL HARRISON: Right.

20 SANDRA RIGGS: ---because we're now holding escrow
21 for money that the Board never had jurisdiction---.

22 JILL HARRISON: Okay. I---.

23 SANDRA RIGGS: ---for people and tracts---.

24

--

1 JILL HARRISON: Right.

2 SANDRA RIGGS: ---that were never included within
3 the pooling order and what I'm saying is in order to get that
4 record back to where it needs to be, and that...the escrow
5 agent looks to the supplemental order and that supplemental
6 order says of all money is on deposit, this is who it belongs
7 to. And that's not the case because when you look at the
8 supplemental order, what you're saying is there are people
9 who have claims to that money who are not in that
10 supplemental order.

11 JILL HARRISON: Right. I understand that and you've
12 explained it to me before, but I wanted to make it clear to
13 the Board that this was not a situation where PGP was
14 intentionally, or Consol, intentionally omitting individuals
15 from these orders.

16 SANDRA RIGGS: Right.

17 JILL HARRISON: Now, the method has since changed
18 and we do have an Exhibit E that is attached to the
19 supplemental order that lists everybody that's conflicting
20 whether they're leased or unleased. So---.

21 SANDRA RIGGS: Well, my concern is with regard to
22 your voluntary leases or what they say or waives what. Mine
23 is that the paper trail---.

24

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1 JILL HARRISON: Right, and we'll create that.

2 SANDRA RIGGS: ---from the time that we entered---.

3 JILL HARRISON: Absolutely no problem.

4 SANDRA RIGGS: ---the order and the supplemental

5 order properly tracks funds that are on escrow---.

6 JILL HARRISON: I understand that.

7 SANDRA RIGGS: ---so that they relate.

8 JILL HARRISON: I understand that and we'll correct,

9 but I wanted the point with the Board that this was not a

10 situation where anything intentional had been done. That was

11 the method of operation at the time and that has since

12 changed.

13 SANDRA RIGGS: No, I understand that.

14 JILL HARRISON: I know.

15 SANDRA RIGGS: I understand.

16 JILL HARRISON: But I don't think the rest of the

17 Board was aware of that fact and I just wanted to point that

18 out.

19 BOBBY J. LOONEY: See, we had a problem. We had

20 money for the same unit that if it was pooled that we were

21 holding in-house escrows in and in the bank, too. So, it is

22 double accounting, in other words.

23 SANDRA RIGGS: The voluntary leases allowed them to

24

1 internally suspend payments---.

2 BOBBY J. LOONEY: Yeah.

3 SANDRA RIGGS: ---instead of paying them into
4 escrow, but the problem we have now is we have money in
5 escrow that it was subject to those lease, but it is not
6 reflected in the Board order.

7 JILL HARRISON: Right.

8 BOBBY J. LOONEY: Right.

9 JILL HARRISON: And that's fine, we can take care of
10 that. That's no problem.

11 BOBBY J. LOONEY: Okay.

12 SANDRA RIGGS: The paper trail needs to be there so
13 that---.

14 JILL HARRISON: I understand completely.

15 SANDRA RIGGS: ---as we disburse out---.

16 JILL HARRISON: I understand and we'll take care of
17 that.

18 SANDRA RIGGS: ---yeah, okay.

19 JILL HARRISON: Are there any additional questions
20 then about the northeast long wall nine?

21 MASON BRENT: Any questions from---?

22 CLYDE KING: Well, I don't know what you two were
23 talking about, but---.

24

--

1 SANDRA RIGGS: Well---.

2 JILL HARRISON: We're going to alleviate a problem,
3 Mr. King. That's what we're going to do.

4 CLYDE KING: Okay.

5 JILL HARRISON: We're going to take care of a
6 problem.

7 CLYDE KING: Bring me in there somewhere.

8 SANDRA RIGGS: Well, my point is that before the
9 disbursement order can be entered, we first have to get the
10 record straight.

11 JILL HARRISON: We'll being doing that before you
12 can blink your eyes.

13 SANDRA RIGGS: And that has to be done through an
14 operator's affidavit.

15 JILL HARRISON: We will take care of that.

16 SANDRA RIGGS: All right.

17 BOBBY J. LOONEY: Through a supplemental order, is
18 that what you're saying?

19 SANDRA RIGGS: Right.

20 BOBBY J. LOONEY: Okay.

21 BILL HARRIS: It can...so, the cases we're
22 concerning now, does the motion have to say that supplemental
23 order has to be in place be---?

24

1 SANDRA RIGGS: The orders that I drafted last month,
2 because we had the same problem, require the filing of the
3 amended supplemental order.

4 JILL HARRISON: Well, see I just---.

5 SANDRA RIGGS: As a prerequisite to disbursement.

6 JILL HARRISON: Yeah, I just got your fax last
7 night. So, I have not had time to read it to look at that
8 order, but I'll take a look at that.

9 SANDRA RIGGS: And I would hope that part of the
10 approval would require the filing of that amended
11 supplemental order---.

12 BILL HARRIS: That's what I'm asking you.

13 SANDRA RIGGS: ---in order to correct the paper
14 trial.

15 JILL HARRISON: Okay. Well, then---.

16 BILL HARRIS: Yeah, we would have to state the
17 motion.

18 JILL HARRISON: I guess I have another question
19 then, because when you and I had talked about it, you had
20 indicated that it was a possibility that the operator could
21 do an affidavit that would lay out---.

22 SANDRA RIGGS: Well, they do. That's what it is
23 basically. It attaches to the supplemental order.

24

1 JILL HARRISON: This was an entirely separate item
2 that you and I were discussing on the telephone, that I
3 understood would be acceptable.

4 SANDRA RIGGS: That's because we were beyond
5 Board...Board action at that point.

6 JILL HARRISON: All right. So, the affidavit that
7 we were talking about is out. What we will have to do is
8 this supplemental order.

9 SANDRA RIGGS: On these.

10 JILL HARRISON: The only reason I'm asking you is
11 because of time. The Garden Realty and Hugh McRae funds that
12 were approved to last April, May and June have not been
13 disbursed and part of that is because a petition was filed
14 about the accounting. But that matter has been resolved
15 what, three or four months ago, something to that effect.
16 The conflict is no longer there. There are no objections to
17 the accounting and so...

18 SANDRA RIGGS: No.

19 JILL HARRISON: At least three months.

20 SANDRA RIGGS: They asked for another accounting.
21 It was the last action taken of this Board and that was at
22 the January docket and that order is now been entered because
23 they want more detail.

24

--

1 JILL HARRISON: Well, I'll care of that.

2 SANDRA RIGGS: So, that...no, those are not
3 resolved.

4 JILL HARRISON: It's my understanding that it was
5 and I have that from Hugh McRae and from Garden Realty. So,
6 I'll take care of that myself.

7 SANDRA RIGGS: Well, if that has occurred, it has
8 happened outside of the Board.

9 JILL HARRISON: Right.

10 SANDRA RIGGS: The last I heard...orders have just
11 been entered within the past two weeks requiring another
12 accounting.

13 JILL HARRISON: All right. Then I'll take care of
14 that. All right. Back to the northeast long wall nine. All
15 right. Then on the south long wall seven. On the
16 supplemental order for the south long wall seven, they are
17 shown on Exhibit B-2. So, this is another one that we will
18 have to do a supplemental order on to show them as a
19 conflicting claimant. So, how do you...how would you like
20 for me to tie this one in?

21 SANDRA RIGGS: Well, we can't tie it back to
22 anything that's of record. So, you will just have to do it
23 to your application and condition the action of the Board
24

1 upon your filing your supplemental in order to correct the
2 record.

3 JILL HARRISON: Okay.

4 SANDRA RIGGS: Because these orders get recorded in
5 the public records and that's where---.

6 JILL HARRISON: I'm aware of that. Uh-huh.

7 SANDRA RIGGS: That's the record I'm talking
8 about---.

9 JILL HARRISON: I understand.

10 SANDRA RIGGS: ---and that would be through the
11 supplemental order.

12 JILL HARRISON: All right. Thank you. All right.
13 Then we would go on to the south long wall five, if I can't
14 tie it in.

15 CLYDE KING: Where are we now?

16 TOM FULMER: Five.

17 CLYDE KING: Five?

18 BILL HARRIS: Five.

19 SANDRA RIGGS: Just let me know which ones you will
20 have to be doing the amended supplemental on.

21 JILL HARRISON: So far, all of them.

22 SANDRA RIGGS: Okay.

23 Q. All right, Mr. Looney, on the south long
24

1 wall five, does Exhibit Eight in the book lay out the
2 interests which have been purchased by PGP and/or Consol, or
3 which were previously owned by PGP or Consol?

4 A. Yes.

5 Q. And do the interest percentages that are
6 shown on this Exhibit Eight correspond to the percentages
7 that we have shown in our application---?

8 A. Yes.

9 Q. ---as the interests that are claimed?

10 A. Yes, I think we have.

11 JILL HARRISON: Again, this is one we will have to
12 do a supplemental order on.

13 Q. The next one on the docket is the south long
14 wall six. And Mr. Looney, if you will look at Exhibit Eight,
15 are these interests that are previously shown in the
16 application or on the orders interests that properly reflect
17 what is claimed now by PGP and/or Consol in the application
18 for this disbursal?

19 A. Yes.

20 JILL HARRISON: And we have attached to this the
21 deed that is from Amos Meadows, because this occurred after
22 the last supplemental order, in which Mr. Meadows conveyed
23 his interest to Buchanan Production Company. And the next
24

1 deed is the deed that is from Buchanan Production to
2 Pocahontas Gas Partnership, so that the Board can see how
3 those interest ended up in PGP.

4 SANDRA RIGGS: When you do your supplemental order,
5 can you show the current grantee as successor, you know, in
6 parenthesis, so it tracks back?

7 JILL HARRISON: Sure, I'd be glad to. Does the
8 Board have any questions about this south long wall six or
9 the conveyance that I listed back there?

10 MASON BRENT: Any questions from the Board?

11 (No audible response.)

12 MASON BRENT: It appears not to be. Go ahead and
13 move forward.

14 JILL HARRISON: And the next unit on the document is
15 the south long wall eight.

16 Q. And Mr. Looney, I'll ask you to look at
17 Exhibit Eight and the tracts and the interests that are shown
18 here, are these---.

19 JILL HARRISON: Actually, we do have a supplemental
20 order on this unit and they're shown on Exhibit E on the last
21 order in your section two. And it's actually the last four
22 pages in your section two. So, if you go to the very back of
23 section two and count up four pages and they are shown

24

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1 under...at the bottom of page you will see a 31.650 acre
2 tract in which Hugh McRae owns the coal and on the next page.

3 BILL HARRIS: Wait a minute.

4 JILL HARRISON: I'm sorry.

5 BILL HARRIS: This is the second...at the end of
6 page...at the end of section two...Exhibit Two...Exhibit
7 ...wait a minute.

8 JILL HARRISON: Exhibit E. It's the very last four
9 pages.

10 BILL HARRIS: I thought I had it...yeah,
11 last...okay. Starting with page one at the bottom of that.

12 JILL HARRISON: Yes, sir.

13 BILL HARRIS: Okay. Wait, let me get in, will you?

14 JILL HARRISON: At the bottom of that page, a 31.650
15 acre tract shown as the coal owner as Hugh McRae Land Trust,
16 and on the top of the next page two tracts are identified,
17 one as being in Pocahontas Gas Partnership 4.108 acres, and
18 Consolidation Coal 7.54 acres. And then if you go to the
19 next page at the bottom, it's identified as a 55.975 acre
20 tract and Hugh McRae is shown as the coal owner and then if
21 you drop down about the middle of the page, there is a
22 Consolidation Coal tract, 13.24 acres. Those are the three
23 tracts that are involved in this application.

24

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1 MASON BRENT: Okay. Any questions from the Board?

2 JILL HARRISON: I had one. All right. Then on the
3 south long wall nine.

4 Q. Mr. Looney, I'll ask you to look at Exhibit
5 Eight, and this is one on which there is not a supplemental
6 order. And if you would look at the interests that are shown
7 there and I'll ask you if these are the interests that
8 correspond to the interests shown in our application for the
9 release of the funds?

10 A. Yes.

11 JILL HARRISON: And attached to the back of that is
12 a deed that is from Oliver Sisk to Consolidation Coal Company
13 and that has also occurred since the last supplemental order.
14 So, we've provided a copy of that for the Board to see. And
15 those are the six units we're here on today. Also, attached
16 as exhibits in the book are copies of the notice of
17 publication which we put in the Bluefield paper as well as
18 copies of our return receipts and our copies of our green
19 cards. We had previously filed last week with the oil...Gas
20 and Oil office, our affidavits setting forth that notice had
21 been sent by certified mail and by publication in the
22 Bluefield paper. And that's all I have Mr. Chairman. Thank
23 you.

24

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1 SANDRA RIGGS: Do we have a cut off date on which
2 they will stop depositing...that the Board can order deposits
3 to stop into escrow and commence paying according to the
4 settlement.

5 BOBBY J. LOONEY: The last one we did we had two
6 months, you know, we done this month and next month. So, I
7 think we need that much time and then we can stop. If you
8 want to put the end of---.

9 SANDRA RIGGS: They'd normally deposit on the 25th
10 of the month.

11 BOBBY J. LOONEY: Yeah, it's about around the 20th.

12 SANDRA RIGGS: So, you're going to make the April
13 25th and May 25th. So---.

14 BOBBY J. LOONEY: May 25th. Yes.

15 SANDRA RIGGS: ---after May 25th, you will pay
16 direct.

17 BOBBY J. LOONEY: Pay it. that's right. If
18 that's...I mean, if that's---.

19 SANDRA RIGGS: Okay. Settlement date is May 25th
20 under the order.

21 JILL HARRISON: All right.

22 BOBBY J. LOONEY: If that's okay with the Board, I
23 mean, that will be fine with us.

24

--

1 SANDRA RIGGS: Well, the reason for having that is
2 otherwise, we end up having to go back and do the accountings
3 again if we don't have that settlement date.

4 BOBBY J. LOONEY: Yeah.

5 JILL HARRISON: So last payment---.

6 CLYDE KING: May 25.

7 JILL HARRISON: ---May 25th.

8 BOBBY J. LOONEY: You could put it at the end of the
9 month if you'd like. I mean, it...because that would be for
10 production through...it doesn't matter.

11 SANDRA RIGGS: It doesn't. Its just the deposit
12 date we're looking at.

13 BOBBY J. LOONEY: Yeah, okay. Yeah, okay. Because
14 that would be for production two months back, I believe the
15 way..fix it or a month and half back or something.

16 SANDRA RIGGS: What...what I would like to suggest
17 to the Board, is that the order that gets entered require the
18 filing of the amended supplemental order showing the
19 subsequent conveyances and getting the record straight and
20 require the escrow, but not actually order the disbursement.
21 And then we'll try to get it back on the docket before this
22 cut off date. Go on order it for May 25th forward, you pay
23 direct, and then bring it back to the Board to actually tie

24

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1 in the monies. Let them look at the accounting and order the
2 disbursement.

3 CLYDE KING: In the June meeting?

4 JILL HARRISON: I'm not following.

5 SANDRA RIGGS: I don't think that will hold you---.

6 JILL HARRISON: We are going to have to appear
7 again? I'm not following what you're---.

8 SANDRA RIGGS: The way it stands right now the
9 Board's record regarding the orders that it...it has to enter
10 another---.

11 JILL HARRISON: I understand that.

12 SANDRA RIGGS: ---in order to tie this all
13 together.

14 JILL HARRISON: Right.

15 SANDRA RIGGS: So, it seems like the cart before the
16 horse for the Board to order that the money go on and pay out
17 until they have that reconciliation. It doesn't hold it up
18 to go on and set a settlement date, get the accountings in
19 and make sure everybody is agreement with the accountings
20 because the way we normally provide is, once it's provided to
21 the applicants, if they are unhappy with the accountings,
22 they have the right to come back to the Board.

23 JILL HARRISON: Uh-huh.

24

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1 SANDRA RIGGS: In this case, that probably isn't
2 going to happen.

3 JILL HARRISON: That's not going to happen.

4 CLYDE KING: So, we can set a...we can set a closing
5 date?

6 SANDRA RIGGS: Well, we set a cut off date for
7 deposits into escrow.

8 CLYDE KING: As June...as May 25th.

9 SANDRA RIGGS: Which would be the accounting date.
10 That would set the date through which the escrow agent and
11 the unit operator have to report amounts on deposit.

12 JILL HARRISON: Uh-huh.

13 SANDRA RIGGS: Then what you need is the percentage
14 of the percentage which you apply to that number in order to
15 come up with the dollar value.

16 JILL HARRISON: We can have that. I've already got
17 it. That's no problem.

18 SANDRA RIGGS: Well, it will change because you're
19 going have more...two more deposits, right?

20 JILL HARRISON: The percentage will not change.

21 BOBBY J. LOONEY: The percentage will be the same.

22 JILL HARRISON: The percentage will be exactly the
23 same---.

24

1 CLYDE KING: No the percentage won't change .
2 JILL HARRISON: ---because there is no interest
3 being changed.
4 CLYDE KING: The dollars will change.
5 JILL HARRISON: Mr. King is exactly right. The
6 percentages will not change.
7 CLYDE KING: But the percentage---.
8 BOBBY J. LOONEY: Well, once...once we do Garden
9 Realty, now the percentage is going to change.
10 SANDRA RIGGS: That's exactly right. The timing of
11 this stuff is crucial.
12 JILL HARRISON: See, that's what I'm concerned
13 about. I mean, if we can do everything at one, time we
14 can---.
15 BOBBY J. LOONEY: See, I can't do these because
16 Garden...if we do Garden Realty, then these percentages is
17 going to change. That's right. See.
18 SANDRA RIGGS: And their cut off date is April 25th.
19 Was that---?
20 BOBBY J. LOONEY: No theirs is done cut off.
21 SANDRA RIGGS: No, theirs is already cut off.
22 You're paying them direct. I'm thinking of the other Torch.
23 BOBBY J. LOONEY: We're paying them direct since
24

1 last...let's see---.

2 JILL HARRISON: August...August?

3 BOBBY J. LOONEY: Yeah.

4 JILL HARRISON: Last August.

5 BOBBY J. LOONEY: So see, if that money is

6 disbursed, their money, then we're going to have go back and

7 redo what---.

8 JILL HARRISON: Our figures.

9 BOBBY J. LOONEY: That's right.

10 SANDRA RIGGS: Well, now maybe I'm being dense here,

11 but if you're paying them direct now the same proportion, as

12 of their settlement date, the proportion changed, did they

13 not...already changed?

14 BOBBY J. LOONEY: No, not the percentage. It

15 will...we have to cut off at that date. Their percentage

16 will be up to there, and then they ain't going to have money,

17 see, from that date. See---.

18 JILL HARRISON: When I was...when we were talking on

19 the phone and I asked you if you had the numbers---.

20 BOBBY J. LOONEY: It would be what, last June or

21 something?

22 JILL HARRISON: ---as of last August, that's what I

23 was concerned about, because I knew that was the cut off date

24

1 and when they started making direct payments.

2 SANDRA RIGGS: August 25th.

3 JILL HARRISON: All right. The last one was August.
4 Then what the figure we need to look at would be August 25th
5 for those...for the Garden Realty, Hugh McRae---.

6 BOBBY J. LOONEY: Yes.

7 JILL HARRISON: ---on those units.

8 SANDRA RIGGS: Right.

9 JILL HARRISON: And that was why I was asking about
10 that specific amount, if you had those, because I knew I had
11 the percentages, and all I needed to do was apply that, and
12 then when we discussed about the pro-rata interest, that
13 would be the only way you could conceivably do it without
14 hanging yourself first and doing the math was to do a pro-
15 rata portion of the interest from that date on. So, I've got
16 the percentages that are applicable now, but if we disburse
17 one or the other, that's going to change because they are
18 overlaps. They are...some of these units...Hugh McRae,
19 Garden Realty and Consol are involved in.

20 SANDRA RIGGS: Right.

21 JILL HARRISON: So, can we work it out some way that
22 we do disbursements from the escrow account fund on the same
23 day, because if we did that---.

24

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1 SANDRA RIGGS: Are you...are you saying that Hugh
2 McRae and Garden Realty are now in agreement and that can
3 occur?

4 JILL HARRISON: I...I will provide information to
5 you to that effect and find out exactly what is going on with
6 those, because my last instructions last week were to come
7 here today and say we want our money, we are in agreement,
8 what do we have to do? So, they had asked me to do that on
9 their behalf. And so I understand now too, these
10 supplemental orders are going to have to be done because
11 after our conversation, I had reported to them I think we can
12 do an affidavit, get it signed by the operator and we can get
13 our money out.

14 BILL HARRIS: The question I had earlier about
15 making motions and one was that the motions be contingent
16 upon these other orders.

17 SANDRA RIGGS: The supplemental orders getting
18 filed.

19 BILL HARRIS: Yeah, I don't know if that's strong
20 enough to take care of any problems that might come up.

21 JILL HARRISON: About what?

22 SANDRA RIGGS: Well, it is just so difficult from
23 our side because we don't have the paper trail in place to be
24

1 able to track this stuff. You all know from your side, but
2 it doesn't match the paper that we have in front of us and
3 that's my concern.

4 JILL HARRISON: The paper I'm going to give you will
5 match what I've told you today and what I've told you last
6 month. So, I'll...that will be in writing and that's no
7 problem to do that. So, I guess, Mr. Harris, I'm concerned
8 about what problems you think might come up.

9 BILL HARRIS: No, I'm not saying problems.

10 JILL HARRISON: Okay.

11 BILL HARRIS: I'm saying that...what we're saying is
12 that the cart before the horse and what I'm saying is that if
13 we...if we the motion is stated such that these supplemental
14 orders and other...whatever---

15 CLYDE KING: Happened?

16 BILL HARRIS: Yeah, if that happened...if the motion
17 says that has to happen before we do the disbursement...well,
18 I'm not sure where I am in this now.

19 JILL HARRISON: Well, I have to...I'll be here next
20 month. We have filed petitions on Friday that will be heard
21 next month. So, Bob and I will be back one more time and
22 that's the last set of units that we have. If you would like
23 to...I'm trying to think of the easiest way to do

24

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1 this...table this after hearing all of the evidence and
2 knowing that I'm going to get in to Ms. Riggs hands just as
3 fast as I can get it there, the supplemental orders, if you
4 would like to table this until next month and then vote to
5 grant our relief, that's fine.

6 SANDRA RIGGS: That would work.

7 BILL HARRIS: By then we would have the other
8 material in hand.

9 MAX LEWIS: Yeah.

10 SANDRA RIGGS: And we could set a disbursement date,
11 and hopefully Hugh McRae would settle as well, which overlaps
12 some of these and we could---.

13 JILL HARRISON: Right.

14 MAX LEWIS: Yeah.

15 SANDRA RIGGS: Okay.

16 JILL HARRISON: I don't think that in the picture of
17 things that would upset our time table in what we're trying
18 to accomplish, and when I say we, I'm talking about Consol,
19 PGP, Hugh McRae and Garden Realty, if we were to do that.

20 SANDRA RIGGS: Okay.

21 MASON BRENT: Does that suit your purposes?

22 SANDRA RIGGS: I think so, yeah.

23 JILL HARRISON: So, I...but I would not plan to,
24

1 with the Board's permission, not have to go through this
2 again. It would be merely a matter of taking a vote on
3 granting the relief that we've requested.

4 TOM FULMER: We will do that docket.

5 SANDRA RIGGS: The only new evidence---.

6 JILL HARRISON: We will file the supplemental order.
7 You're right, Mr. Lewis.

8 MAX LEWIS: Yeah, right. File those, yeah.

9 BOBBY J. LOONEY: Okay.

10 SANDRA RIGGS: ---would be the supplemental orders
11 be filed.

12 TOM FULMER: Would that, though, certainly not---?

13 BILL HARRIS: negate? I didn't mean to put words in
14 your mouth.

15 TOM FULMER: ---negate this stop payment escrow?

16 SANDRA RIGGS: Well, we're not going to...I think
17 they need to have a cut off date for paying into escrow. I
18 mean, you can accept---.

19 JILL HARRISON: Period.

20 SANDRA RIGGS: ---the settlement agreement and vote
21 to establish the cut off date for payment and then follow
22 through next month with the actual accounting and
23 disbursement. You could even go on and order the accounting
24

1 as of a date certain.

2 JILL HARRISON: Uh-huh. That date. Uh-huh.

3 SANDRA RIGGS: Just hold up on the disbursement is
4 what I was suggesting.

5 JILL HARRISON: Right. We just need to...I agree
6 with Ms. Riggs that we need to pick a date that they stop
7 paying in...a date certain so that we can apply the
8 percentages to that amount. I agree with Ms. Riggs on that.
9 But I don't think it matters if we, and I might be
10 overlooking something, but I don't think that it would matter
11 if the orders...if the Board votes today or if the Board
12 votes---.

13 SANDRA RIGGS: That's right since it's two months
14 out anyway.

15 JILL HARRISON: But you all just please be here so
16 we can have a quorum so that I don't get pushed back another
17 month.

18 TOM FULMER: That...I guess the only thing I was
19 mentioning, if you had an exact date when you were going to
20 stop paying into escrow for everything that you've got out on
21 ...or going to have, you're going to be a lot better off on
22 the disbursement. I can tell you that. Because you're going
23 to be---.

24

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1 CLYDE KING: But if you make a motion, and it is
2 subject to these things and do it today while we've got a
3 quorum, subject to May 25th cut off date.

4 BILL HARRIS: Well, yeah.

5 JILL HARRISON: That would...we would be glad...that
6 would---.

7 CLYDE KING: Would that not do it?

8 MAX LEWIS: No, I'd just table it until---.

9 JILL HARRISON: We'd be glad...I just...please, you
10 all be here so that---.

11 BILL HARRIS: See, that's the only thing. If we
12 don't have a quorum, then---.

13 JILL HARRISON: Yeah, if you all don't have a
14 quorum, and I'm pushed back another thirty days, I'm going to
15 be in hot water.

16 SANDRA RIGGS: If you disburse something that you're
17 not supposed to, you know, you've got to come---.

18 CLYDE KING: Well, if it's all subject to---.

19 BILL HARRIS: If it's all subject to---.

20 JILL HARRISON: Well, if it's subject to---.

21 BILL HARRIS: Can't do that.

22 JILL HARRISON: ---the order...I mean, because
23 that's how you've drafted last month's where...I thought.
24

1 BILL HARRIS: Well, the assumption is that
2 everything is going to be okay once we get that other---.
3 CLYDE KING: But if it is not okay, then the motion
4 is null and void.
5 BILL HARRIS: Well, what's...you may though, without
6 looking at it.
7 SANDRA RIGGS: Well, Jill has already said that it
8 won't slow them up for you all to act on the actual
9 disbursement next month. You can go on and approve the cut
10 off date.
11 JILL HARRISON: Right. If everybody...if you all
12 are going be here, so I can have a quorum.
13 SANDRA RIGGS: And order the accounting as of that
14 date.
15 BILL HARRIS: What's next month? May?
16 JILL HARRISON: I don't think thirty days are going
17 to be any problem in the big picture---.
18 BILL HARRIS: Yes.
19 JILL HARRISON: ---we're trying to work under, but
20 if we're talking about sixty days, I'm going to be in a lot
21 of trouble.
22 BILL HARRIS: Sixty days would be, yeah.
23 SANDRA RIGGS: How many docket items are there? Do
24

1 you know that?

2 BILL HARRIS: Well, we just continued---.

3 TOM FULMER: Well, we've got all of Mark's and
4 you've got two continued---.

5 SANDRA RIGGS: Plus all of these continuations.

6 TOM FULMER: ---six, seven, eight, so far.

7 JILL HARRISON: And we've filed---.

8 BOBBY J. LOONEY: Five.

9 JILL HARRISON: ---five on Friday.

10 TOM FULMER: Eight and five is thirteen. I have no
11 idea what EREC is doing.

12 BOBBY J. LOONEY: We don't have anything. Just the
13 ones---.

14 SANDRA RIGGS: So, we've got a full docket.

15 TOM FULMER: You all don't have any?

16 BOBBY J. LOONEY: ---no, just the ones that---.

17 TOM FULMER: Just the ones you're going to do...so,
18 I have no idea what EREC is going to do---.

19 BOBBY J. LOONEY: Ones that...yeah.

20 TOM FULMER: ---but you've got thirteen so far.

21 CLYDE KING: When is the May meeting?

22 JILL HARRISON: May the 21st.

23 CLYDE KING: I may not be here.

24

1 JILL HARRISON: Mr. King.

2 CLYDE KING: That's what I'm saying.

3 BILL HARRIS: Yeah, I may not be here either.

4 JILL HARRISON: Well, then if Mr. King and Mr.

5 Harris are not going to be here, I definitely withdraw my

6 offer to table because they're the two, and Mr. Lewis and Mr.

7 Brent---.

8 MAX LEWIS: I'll be here if I can make it...if the

9 Lord's will.

10 JILL HARRISON: ---I mean, you are the ones that

11 are always here and if two of the mainstays are not going to

12 be here, I withdraw my offer. We can't afford to do that

13 because...I mean, I know that we're going to get the

14 orders...the supplemental orders, that's my number one

15 priority.

16 CLYDE KING: I can't understand why they would be a

17 conflict---.

18 BILL HARRIS: Yeah.

19 CLYDE KING: ---if we made a motion that said these

20 things have to happen.

21 BILL HARRIS: Yeah, contingent upon receiving---.

22 CLYDE KING: Contingent upon those things.

23 BILL HARRIS: I don't know if that's good business

24

1 practice though, or a legal practice, really.

2 SANDRA RIGGS: It's accounting practice is what
3 we're talking about here.

4 CLYDE KING: Well, if it is legal, then the
5 accounting ought to be able to follow.

6 BOBBY J. LOONEY: I don't think there's any problem
7 on the supplemental orders because we have all that
8 information anyway, you know, it's just a matter of getting
9 them filled out within that length of time.

10 JILL HARRISON: I mean, we know what we have.

11 BOBBY J. LOONEY: You're wanting me to do Garden
12 Realty, also, right, Garden Realty and Hugh McRae?

13 SANDRA RIGGS: Those also didn't have supplemental
14 orders.

15 BOBBY J. LOONEY: Yeah, that's what I'm saying. It
16 didn't tie those back. I know it.

17 JILL HARRISON: Well, these are unit overlaps.

18 BOBBY J. LOONEY: All of those old ones didn't,
19 yeah.

20 JILL HARRISON: Yeah.

21 BOBBY J. LOONEY: Oh, yeah, these would be---.

22 JILL HARRISON: These are overlaps, so they're going
23 to be included in that.

24

1 BOBBY J. LOONEY: So, they're going to be included
2 anyway.

3 SANDRA RIGGS: I know.

4 JILL HARRISON: Yeah.

5 BILL HARRIS: Is there some language that can be put
6 in that...I mean, well, that protects everyone involved in
7 the supplemental orders do...I mean, you...you all wouldn't--
8 -.

9 JILL HARRISON: Well, it sounds like you could...we
10 could do basically what you've done, Sandy. I've got the
11 draft here, but since it came last night, I haven't had time
12 to look at it, but---.

13 SANDRA RIGGS: It stopped short, I think, of
14 ordering disbursement.

15 JILL HARRISON: Oh, really.

16 SANDRA RIGGS: Uh-huh. It requires the accounting
17 and it requires the...it establishes the settlement date.

18 JILL HARRISON: Uh-huh.

19 SANDRA RIGGS: If you'll remember the original ones,
20 it says you'll file your accounting. If everybody is happy
21 with the accounting, then the escrow agent will disburse. If
22 you'll unhappy with the accounting, then you've got to notice
23 the Board within so many days and you come back for a

24

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1 hearing.

2 JILL HARRISON: Right.

3 SANDRA RIGGS: The problem you have with that, is

4 the escrow agent needs instructions about what dollar to

5 disburse.

6 JILL HARRISON: Uh-huh.

7 SANDRA RIGGS: And at this point we don't have the

8 information necessary to give that instruction.

9 JILL HARRISON: Well, they've been accepting the

10 funds even though they didn't have an order. So...I mean---.

11 SANDRA RIGGS: Well, they had an order---.

12 TOM FULMER: Well, that's another question

13 altogether.

14 BILL HARRIS: Yeah, yeah.

15 JILL HARRISON: All of the money is in there and the

16 orders obviously don't, you know, the supplemental orders

17 obviously don't say...you know, have the information that

18 they do now. But nevertheless---.

19 SANDRA RIGGS: They had supplemental orders. They

20 just didn't reflect these interests.

21 JILL HARRISON: Okay. If---.

22 BOBBY J. LOONEY: Yeah.

23 SANDRA RIGGS: And there was an account, it just

24

1 wasn't for these people.

2 JILL HARRISON: All right. If I get...if I get
3 these supplemental orders into your hands say next week, I
4 mean, since I got this yesterday...well, you have even
5 drafted the orders from today before we could get those
6 supplemental orders into your hands?

7 SANDRA RIGGS: What I'm hoping is once we work out
8 the language for this order, it is just a matter of pumping
9 them out.

10 JILL HARRISON: Regurgitating it?

11 SANDRA RIGGS: Right.

12 JILL HARRISON: So, it's a matter of getting the
13 first one worked out before I prepare all of the others.

14 CLYDE KING: Now, where are we?

15 SANDRA RIGGS: I think the escrow agent is going to
16 require an order from this Board saying disburse X dollars
17 and we can't do that today because we don't have what we need
18 to calculate that number. You've got to have an accounting
19 as of the settlement date in order to apply the percentage to
20 come up with the number.

21 JILL HARRISON: Well, I'm not asking that it say
22 disburse X dollars. I'd ask that they disburse according to
23 the percentage of interest that we have in those funds and we

24

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1 said before, we don't know what that dollar is. I mean, I
2 couldn't sit here today and tell you all that there two
3 hundred thousand dollars (\$200,000.00) attributed to this
4 unit.

5 CLYDE KING: If your percentage is correct, then the
6 dollars will fall in place, won't it?

7 JILL HARRISON: That's right, Mr. King. You just
8 apply that percentage. That's why, you know, I have no
9 problem with saying it's supplemental to this. I also know
10 I'm going to get these into your hands next week.

11 SANDRA RIGGS: So, all the order can say at this
12 point, or at the point we get the supplemental order, is to
13 disburse X percentage of all monies you have in your hands as
14 of X date to these parties.

15 JILL HARRISON: Subject to---.

16 SANDRA RIGGS: 50/50.

17 JILL HARRISON: ---uh-huh. Subject to that
18 agreement, right. Well, that's what the prior ones basically
19 said, wasn't it, they are to disburse according to the
20 percentage that they hold in the unit and 50/50? I mean,
21 that's what the past orders have said.

22 SANDRA RIGGS: Well, that's because when those
23 orders were entered, all of this hadn't---.

24

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1 JILL HARRISON: Blossomed.
2 SANDRA RIGGS: ---blossomed---.
3 JILL HARRISON: Okay.
4 SANDRA RIGGS: ---from the point that we understood
5 what was happening.
6 JILL HARRISON: All right. All right. Well---.
7 CLYDE KING: So, where are we?
8 SANDRA RIGGS: Well, so everybody is comfortable at
9 this point that you can tie it to a percentage as of a date
10 certain, even though the Hugh McRae disbursements overlap the
11 Torch disbursements?
12 JILL HARRISON: Well, I'm going to do my very best
13 to insure that everything happens at the same time because I
14 think that would be the easiest thing for the escrow agent.
15 SANDRA RIGGS: And the fact that the---.
16 BOBBY J. LOONEY: No...no, we can't do that now on
17 the Hugh McRae and Garden Realty because you can't that at a
18 certain date. Theirs has already been cut off. You're going
19 to have to take theirs as of---.
20 SANDRA RIGGS: You have two different settlement
21 dates.
22 JILL HARRISON: So, it won't even matter...so, it
23 won't matter?

24

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1 BOBBY J. LOONEY: No, it won't matter.
2 JILL HARRISON: Okay.
3 BOBBY J. LOONEY: But we're going to have to---.
4 SANDRA RIGGS: It won't matter if you get theirs out
5 first---.
6 JILL HARRISON: First.
7 BOBBY J. LOONEY: Right.
8 SANDRA RIGGS: ---adjust the percentages and then
9 disburse these.
10 BOBBY J. LOONEY: That's right. That's what we've
11 got to do.
12 JILL HARRISON: All right.
13 SANDRA RIGGS: It will matter if you try to apply
14 this percentage to the total amount that's in there now.
15 JILL HARRISON: All right.
16 MAX LEWIS: Right.
17 BOBBY J. LOONEY: Right. That's what I was trying
18 to get at. You can't---.
19 CLYDE KING: But the Hugh McRae...I mean, the...now,
20 what is it that has to come out first.
21 SANDRA RIGGS: Garden Realty.
22 BOBBY J. LOONEY: Garden Realty and Hugh McRae.
23 JILL HARRISON: Garden Realty and Hugh McRae.
24

1 CLYDE KING: Garden Realty and Hugh McRae.
2 BOBBY J. LOONEY: Has to come out first.
3 JILL HARRISON: Right.
4 CLYDE KING: That's the one we did last year.
5 BOBBY J. LOONEY: Right.
6 SANDRA RIGGS: Right.
7 CLYDE KING: Right.
8 JILL HARRISON: And I will get on the phone and---.
9 TOM FULMER: Is that Tom?
10 JILL HARRISON: ---find out what's going on.
11 TOM FULMER: Is that Tom?
12 JILL HARRISON: Uh-huh. Because my instructions
13 today were to say---.
14 CLYDE KING: Well, then, can we make a motion and
15 say percentages?
16 SANDRA RIGGS: Well, it's percentages, it's
17 sequencing of disbursements and it's settlement dates. Why
18 don't...why don't I draft a proposed or...well...I started to
19 say draft and proposed order and submit it back. Work on the
20 language of the order and do it that way.
21 JILL HARRISON: Well, the supplementals to you next
22 week this is going to be a moot problem, will it not?
23 SANDRA RIGGS: You would think so, except the
24

1 sequencing.

2 JILL HARRISON: Well, that's...I'll work on that on
3 my end.

4 BOBBY J. LOONEY: I can go ahead...I can fix that
5 already. The only thing you'd just have to take the account
6 balance of a certain date...take Hugh McRae and Garden Realty
7 and then the balance of the money then would be split on---.

8 CLYDE KING: Can the motion---?

9 SANDRA RIGGS: All of this really comes down to what
10 kind of comfort level does the Board need in order to
11 disburse monies out of the escrow account. The way it is
12 structured right now, it would be based upon a certification
13 of the unit operator as to the amounts on deposit and the
14 amount on deposit that is attributable to the conflicting
15 claims that are subject to settlement.

16 CLYDE KING: With a cut off date of May 25. Is that
17 what were looking?

18 SANDRA RIGGS: For this particular batch?

19 CLYDE KING: Right.

20 SANDRA RIGGS: Yeah.

21 CLYDE KING: And the other has already been cut off?

22 SANDRA RIGGS: Before all the Board asked for was
23 just a straight accounting, not a certification. I think

24

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1 there's a difference and I wasn't here January 20th when you
2 all went through all of that and I think Tom was here...you
3 weren't here either...of exactly what kind of record does the
4 Board need to make itself comfortable to order disbursement.
5 And you have the paper trail that's established with the
6 notice and the application and the hearing and that ties down
7 percentages and then you follow that through with the
8 supplemental order based upon who leases, who doesn't lease,
9 what elections are taken, what's being escrowed, what's being
10 internally suspended. Supposedly, that sets the record, and
11 the money is flowing into escrow, flow from that supplemental
12 order so that if you take the supplemental order and compare
13 it to the escrow amount, the percentages outlined there
14 reflect who has an interest in that escrow account. The
15 problem we have here is that the supplemental order...that
16 there are monies in escrow that are not reflected on the
17 supplemental order. When we get that record corrected, you
18 ought to be able to look at the supplemental order and apply
19 it. Now, the only next problem is that you have different
20 groups of people pulling money out, and every time somebody
21 pulls some money out, the proportion to which the remaining
22 claimants claim to the whole changes.

23 BOBBY J. LOONEY: That's right.

24

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1 SANDRA RIGGS: So, you've got to sequence that in
2 such a way that you're applying the percentage to the right
3 amount of money.

4 BOBBY J. LOONEY: Well, I think---.

5 SANDRA RIGGS: The third issue is that you've got to
6 have a date certain to fit...compute the total dollar amount
7 and that is the cut off date because after that date they're
8 getting their checks direct. They're not...they don't have a
9 claim to money going in after that.

10 JILL HARRISON: Well, we've got the cut off date.
11 We'll get you the supplemental orders next week that will set
12 forth the percentages.

13 SANDRA RIGGS: Right. Which would be the same as
14 your Exhibit A.

15 JILL HARRISON: Yes, ma'am.

16 SANDRA RIGGS: Okay.

17 BOBBY J. LOONEY: Okay. Now, to address your other
18 question on...when you take monies out, say, you've got the
19 different groups. Okay, at that time, I think we're going to
20 do a supplemental order, ain't that right?

21 SANDRA RIGGS: That's what the order says.

22 BOBBY J. LOONEY: Then it's going to reflect the
23 correct...see...

24

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1 SANDRA RIGGS: Right. Once you pull monies out the
2 operator has to amend the supplemental order to reflect the
3 new percentages.

4 BOBBY J. LOONEY: But where we got started off on
5 the wrong foot...now, we're doing that. That's the way we're
6 submitting them right through it. You can trace ours back
7 now.

8 SANDRA RIGGS: Right.

9 BOBBY J. LOONEY: The ones that---.

10 SANDRA RIGGS: It's these earlier orders.

11 BOBBY J. LOONEY: ---the earlier orders...it's all
12 messed up.

13 TOM FULMER: Most of them in the longwall panels.

14 BOBBY J. LOONEY: That's right.

15 TOM FULMER: And everything after that was done
16 different.

17 SANDRA RIGGS: Yeah, the straight units aren't
18 generally a problem.

19 BOBBY J. LOONEY: Too many people.

20 TOM FULMER: Yeah.

21 SANDRA RIGGS: Okay. Well, this has been healthy, I
22 think, because you know the Board's has heard bits and pieces
23 of it and...but I don't think the Board has ever been
24

1 able...because you don't see the paper work that flows
2 through to be able to see what this disbursement process
3 looks like.

4 CLYDE KING: That's true.

5 JILL HARRISON: Well, I would respectfully request
6 that the Board grant my request for relief subject to my
7 orders, which I will get into your hands next week and that
8 will alleviate the problem.

9 CLYDE KING: I think that will---.

10 SANDRA RIGGS: Subject to the supplemental orders
11 being filed which reflect the same evidence as reflected on
12 Exhibit A so that---.

13 BILL HARRIS: See that's what I'm saying. We have
14 to have the language in there.

15 CLYDE KING: The language has to say so---.

16 BILL HARRIS: And the motion has to protect us.

17 SANDRA RIGGS: Okay.

18 JILL HARRISON: Exactly, I think you're right.

19 SANDRA RIGGS: So, what was noticed to date through
20 Exhibit Eight is the information that will be reflected in
21 the amended supplemental order. So, what you're acting on is
22 your Exhibit Eight disbursements, okay?

23 JILL HARRISON: Well, the supplemental orders now
24

1 are going to cover not only what's shown on these Exhibit
2 Eights, but it's also showing the interest of Hugh McRae and
3 Garden Realty from the prior applications that we did last
4 year.

5 SANDRA RIGGS: Right.

6 JILL HARRISON: So, when you get the supplemental
7 order, it's not going to have just that. It will have
8 everybody in the unit.

9 BOBBY J. LOONEY: Oh, yeah, all conflicts in there.

10 JILL HARRISON: Okay. I just wanted to make sure
11 so that when you all got it like she's lying to us. She told
12 us it would have this information on there.

13 SANDRA RIGGS: See, if you take all these interests
14 and total them, they don't equal a hundred (100) percent.
15 So, you can't take that and apply it to the escrow.

16 BILL HARRIS: Right.

17 SANDRA RIGGS: You have to take that and add it up
18 and figure out what percentage that is to a hundred (100).
19 So, there...it is a double calculation you have to do.

20 CLYDE KING: Well, that's the pencil pushers.

21 SANDRA RIGGS: Who do you think that is?

22 BILL HARRIS: Let me get out of the way here.

23 CLYDE KING: But you...you're making...I think we
24

1 need to make sure we're legally okay.

2 JILL HARRISON: Yes, sir.

3 TOM FULMER: Some of these, Mr. King, is kind of
4 like genealogies any more.

5 CLYDE KING: Oh, yeah.

6 TOM FULMER: I mean, it's unbelievable.

7 JILL HARRISON: I know we've sent out for petitions
8 that we filed on Friday and one alone...one application
9 alone, we sent out almost two hundred (200) return receipt,
10 registered mailings for that application. That's a
11 huge...huge expense and when it gets down to these
12 individuals like the ones that are here today, that's a big
13 cost to have to bear.

14 MASON BRENT: Okay. Well, Sandra, have we addressed
15 your concerns---.

16 SANDRA RIGGS: Yes.

17 MASON BRENT: ---with regard to this totally?

18 SANDRA RIGGS: Yes.

19 MASON BRENT: Okay. So, if we ask for motions on
20 items fourteen, fifteen, sixteen, seventeen, not eighteen,
21 but nineteen as well, subject to---?

22 JILL HARRISON: Oh, we had a supplemental order on
23 eighteen.

24

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1 MASON BRENT: Right.

2 BILL HARRIS: So, we don't need to include that?

3 MASON BRENT: That's why I say not eighteen.

4 JILL HARRISON: Yes, sir.

5 MASON BRENT: We ask for a motion for pooling,
6 subject to their filing an amended supplemental order, we're
7 okay with that?

8 SANDRA RIGGS: Consistent with Exhibit Eight.

9 MASON BRENT: Consistent with Exhibit Eight.

10 SANDRA RIGGS: Right.

11 MASON BRENT: And then...then we're comfortable with
12 it?

13 SANDRA RIGGS: And establishing the cut off
14 settlement date.

15 MASON BRENT: Right, which we have done.

16 SANDRA RIGGS: Right.

17 CLYDE KING: Mr. Chairman, with your...with your
18 language, I so move.

19 MASON BRENT: Well, I need to take these one by one,
20 I believe.

21 CLYDE KING: Oh, okay.

22 MASON BRENT: So, with regard to docket number VGOB-
23 91-12/17-0169-01, I ask for a motion for approval subject to
24

1 filing the amended supplemental orders establishing the cut
2 off date that we've established here at this meeting, and
3 have I covered it all...and...well, yeah, and tying the
4 supplemental orders back to Exhibit Eight?

5 CLYDE KING: And a cut off date of...cut off
6 date...so moved.

7 BILL HARRIS: I second.

8 MASON BRENT: We have a second. Any further
9 discussion?

10 (No audible response.)

11 MASON BRENT: Thank goodness. All in favor signify
12 by saying aye.

13 (All members indicate in the affirmative.)

14 MASON BRENT: Opposed?

15 (No audible response.)

16 MASON BRENT: No opposition. So, the motion is
17 carried. With regard to agenda item number fifteen. This is
18 VGOB-92-02/18-0185-01. I ask for a motion subject to the
19 same stipulations put forward in agenda item fourteen.

20 MAX LEWIS: I make a motion.

21 BILL HARRIS: So moved.

22 MASON BRENT: Do we have a second?

23 BILL HARRIS: Second.

24

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1 MASON BRENT: Any further discussions?
2 (No audible response.)
3 MASON BRENT: All in favor signify by saying aye.
4 (All members indicate in the affirmative.)
5 MASON BRENT: Opposed?
6 (No audible response.)
7 MASON BRENT: No opposition, the motion is carried.
8 With regard to item number sixteen, this is docket number
9 VGOB-92-02/18-0183-01. I ask for a motion subject to the
10 same stipulations provided for on the last two agenda items.
11 BILL HARRIS: So moved.
12 CLYDE KING: Second.
13 MASON BRENT: I have a motion and a second. Any
14 further discussion?
15 (No audible response.)
16 MASON BRENT: All in favor signify by saying aye.
17 (All members indicate in the affirmative.)
18 MASON BRENT: Opposed?
19 (No audible response.)
20 MASON BRENT: No opposition, the motion is carried.
21 Agenda item number seventeen. This is VGOB-92-02/18-0184-
22 01. I'd ask for motion for this item subject to the same
23 stipulations as before.

24

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1 MAX LEWIS: I make a motion.

2 MASON BRENT: I have a motion, is there a second?

3 BILL HARRIS: Second.

4 MASON BRENT: Any further discussion?

5 (No audible response.)

6 MASON BRENT: No discussion. All in favor signify

7 by saying aye.

8 (All members indicate in the affirmative.)

9 MASON BRENT: Opposed?

10 (No audible response.)

11 MASON BRENT: No opposition, the motion is carried.

12 With regard to agenda item number eighteen, this is docket

13 number VGOB-92-04/21-0216-01. There is no need for a

14 supplemental order. I guess, I ask for motion that we

15 approve this application.

16 CLYDE KING: So moved.

17 MASON BRENT: Do I have a second?

18 BILL HARRIS: Second.

19 MAX LEWIS: I second.

20 MASON BRENT: Any further discussion?

21 (No audible response.)

22 MASON BRENT: All in favor signify by saying aye.

23 (All members indicate in the affirmative.)

24

1 MASON BRENT: Opposed?

2 (No audible response.)

3 MASON BRENT: No...no opposition, the motion is

4 carried. And finally, with regard to agenda item number

5 nineteen, this GOB-92/04/21-0217-01, I'd ask for a motion

6 providing the stimulations as provided for in agenda items

7 fourteen through seventeen for the amended supplemental order

8 and cut off date. Do I have a motion?

9 MAX LEWIS: So moved.

10 MASON BRENT: Do I have a second?

11 BILL HARRIS: Second.

12 MASON BRENT: Any further discussion?

13 (No audible response.)

14 MASON BRENT: All in favor signify by saying aye.

15 (All members indicate in the affirmative.)

16 MASON BRENT: Opposed?

17 (No audible response.)

18 MASON BRENT: No opposition, the motion is carried.

19 JILL HARRISON: Thank you all very much and thank

20 each of you for being here today. I really appreciate it.

21 And is there anything...because we will be doing this several

22 more times for different people, if you all have any

23 suggestions about a better way to do this that's easier for

24

1 you all, or different exhibits, I'll be glad to try to do
2 that, whatever you think would help.

3 SANDRA RIGGS: I think in term...and the Board can
4 pipe in here, but in terms of all the paper that you're
5 producing here, I know you want a full set to introduce, but
6 for the Board's purposes with summary that you have and maybe
7 just the supplemental order that---.

8 JILL HARRISON: All right.

9 SANDRA RIGGS: ---ties it to the record together
10 with whatever conveyances and affidavits and so forth, it
11 might cut back on some of your paperwork.

12 JILL HARRISON: All right. So, the supplemental
13 affidavit and have the summary sheet.

14 SANDRA RIGGS: That just tracks what orders have
15 been entered, but---.

16 CLYDE KING: What percentage of the escrow funds are
17 going to be disbursed? Do you have any idea of the total?

18 BOBBY J. LOONEY: No...no, unh-unh.

19 JILL HARRISON: Because we have...there's been
20 another voluntary agreement that's been entered into between
21 Hugh McRae and another major oil and gas owner. So, that
22 will be another set and then I've been approached by various
23 individuals that would also like to do a voluntary agreement,

24

--

1 and I think the best that we can, we're going to try to
2 do...tie it in so that there is one hearing that takes care
3 of everybody's interest.

4 CLYDE KING: I'm delighted to see us dispose
5 ...dispense some of this money out.

6 MASON BRENT: I suspect you're going to see a lot
7 more voluntary settlements.

8 CLYDE KING: Yeah, I hope.

9 BOBBY J. LOONEY: I think it would be...once it gets
10 started and people find out about them, there's going to be
11 more and more.

12 BILL HARRIS: Yeah.

13 SANDRA RIGGS: And that's why we need the process
14 simplified because it makes it very difficult for people---.

15 BILL HARRIS: Uh-huh, right.

16 SANDRA RIGGS: ---to come in and withdraw monies if
17 we don't have the documentation there.

18 CLYDE KING: If this keeps dragging forever, some of
19 these people are going to be gone before it's ever available.

20 SANDRA RIGGS: Yeah, and if you could---.

21 JILL HARRISON: That is what...Ms. King called me.
22 She said, I'm going to be gone before---

23 SANDRA RIGGS: ---if you could for next month, if
24

1 you all could go on and get your supplemental orders in
2 advance if...for the applications next month---.

3 JILL HARRISON: Absolutely.

4 SANDRA RIGGS: ---so that when the hearing happens,
5 we have it.

6 JILL HARRISON: Absolutely.

7 TOM FULMER: Yeah, that will be the best thing to do
8 to get all of this done up front.

9 JILL HARRISON: We'll do that, Tom.

10 MASON BRENT: Well, I think to avoid a mutiny, I'm
11 going to declare a recess here---.

12 JILL HARRISON: Thank you all very much. I
13 appreciate it.

14 MASON BRENT: ---for lunch. What time would you all
15 like to get back together?

16 CLYDE KING: Well, it's twenty after one.

17 MASON BRENT: It's twenty after one now?

18 CLYDE KING: Uh-huh.

19 MASON BRENT: How much time do we need for lunch?

20 CLYDE KING: 2:30?

21 BILL HARRIS: 2:30?

22 CLYDE KING: Is 2:30 enough...too much?

23 MASON BRENT: That's up to your all's pleasure,
24

1 whatever suits you all.

2 CLYDE KING: 2:30?

3 MASON BRENT: That's fine with me.

4 BILL HARRIS: That's what everybody takes.

5 MASON BRENT: That's fine. All right. We'll meet
6 back here at 2:30.

7 (Meeting recessed for lunch.)

8 MASON BRENT: Okay. We're back on the record. The
9 next item on our agenda the Board will consider a petition
10 from Equitable Resources Energy Company, Eastern Region under
11 Section 45.1-361.17 for a well location exception for well
12 number VAD-3804. EREC well VAD-2839 lies 2469.67 feet North
13 13 degrees 44 minutes East from the proposed well VAD-3804
14 and EREC Well Number VAD-3625 lies 2429.89 feet South 81
15 degrees 56 minutes East of proposed well VAD-3804 in the
16 Gladeville District, Flat Gap Quadrangle, Wise County,
17 Virginia. This is docket number VGOB-98-04/21-0659. I'd ask
18 all interested parties that want to address the Board to come
19 forward at this time and introduce yourself.

20 JIM KISER: Mr. Chairman and members of the Board,
21 Jim Kiser on behalf of Equitable Resources Energy Company.
22 Our witnesses in this matter will be Mr. Don Hall and Mr. Bob
23 Dahlin. I'd ask at this time if they'd be sworn.

24

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1 TOM FULMER: Oh.

2 MASON BRENT: Can we swear the witnesses?

3 (Witnesses are duly sworn.)

4 MASON BRENT: Let the record indicate there are no
5 other interested parties in attendance. You may proceed.

6 JIM KISER: Mr. Hall will be our first witness.

7

8

9 DON C. HALL

10 having been duly sworn, was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 QUESTIONS BY MR. KISER:

14 Q. Mr. Hall, could you state your name for the
15 Board and who you are employed by and in what capacity?

16 A. My name is Don C. Hall. I'm with Equitable
17 Resources Energy Company as a district landman for Virginia.

18 Q. And have your qualifications as an expert
19 witness in these matters previously been accepted by this
20 Board?

21 A. Yes, they have.

22 Q. And do your responsibilities include the
23 land involved in this particular application and in the

24

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1 surrounding area?

2 A. Yeah, they do.

3 Q. And are you familiar with the application
4 for a location exception for well number VAD-3804 and the
5 relief requested in that application?

6 A. Yes, I am.

7 Q. And have all interested parties been
8 notified as required by Section 4B of the Virginia Gas and
9 Oil Board Regulations?

10 A. They have.

11 Q. And Mr. Hall, is this another one of
12 Equitable's dual producing wells?

13 A. Yes.

14 JIM KISER: And if I can direct the Board for a
15 moment to the plat that was attached to the application,
16 you'll see that the coalbed methane unit for this dual
17 producer is...the unit is established pursuant to the Roaring
18 Fork Coalbed Gas Field Rules Order and you'll see the
19 location is outside the interior window.

20 Q. Mr. Hall, have you requested, as you're
21 allowed to under the Field Rules Order for Roaring Fork, a
22 location exception for the CBM unit and spoken with Mr.
23 Fulmer about this?

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1 A. Yes, I have.

2 Q. Okay. So, we're here today seeking location
3 exception from the Board for the conventional unit?

4 A. That's correct.

5 Q. Okay. And would you indicate for the Board
6 the ownership of the oil, gas and coal underlying the unit
7 for well number VAD-3804?

8 A. Pine Mountain Oil and Gas owns a hundred
9 (100) percent of the oil and gas and Clinchfield, Pikist and
10 ANR own the coal underlying the unit.

11 Q. And does Equitable have the right to operate
12 the reciprocal wells, those being the wells from which we're
13 seeking an exception?

14 A. Yes, we do.

15 Q. And are there any correlative rights issues?

16 A. No, we have all of the acreage around
17 ...surrounding this unit under lease. These are Clinchfield
18 within Virginia.

19 Q. Okay. And have you personally visited this
20 site?

21 A. Yes, I have.

22 Q. In conjunction with that visit, in the
23 Exhibit that has been prepared and submitted to the Chairman
24

1 and the Board members, would you, in your own words, explain
2 to them why we need a location exception in order to drill
3 ...on a conventional unit in order to drill VAD-3804?

4 A. Well, as you can see from the Exhibit, we're
5 approximately seventy (70) feet short of...from 2839...
6 twenty-five hundred (2500) foot being the minimum spacing and
7 about thirty (30) foot short on...from 3625. The area that I
8 have highlighted in green is the...would be the closest legal
9 location point...spot that we could put the well and if we
10 put it there, there's a...it's not shown on the plat because
11 this plat is pretty busy to begin with, but there's a
12 diversion ditch running generally east/west just south of the
13 well there that...it's a drainage ditch that goes into a silt
14 pond down on the end of that point and it's part of the mine
15 operator's erosion and sediment control plan, and if we got
16 over in the legal location area, we would be in that ditch
17 and be disturbing his erosion and sediment control measures.
18 And...so this is the closest point to the legal location
19 unit that we can get there without disturbing any erosion and
20 sediment control measures...most optimum place to put it.

21 Q. And the area further to the south is a spoil
22 area?

23 A. Yeah, if you go any further to the south,

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1 you see the cross hatched area in the...along the toe...the
2 toe of the bench there, that's spoil area from the previous
3 mining. It's...there was just loose spoil over the hill.

4 JIM KISER: Mr. Chairman, no further questions of
5 this witness at this time.

6 MASON BRENT: Okay. Any Board members have any
7 questions of this witness?

8 (No audible response.)

9 MASON BRENT: Okay. You may proceed.

10

11

12

13 ROBERT A. DAHLIN, II

14 having been duly sworn, was examined and testified as
15 follows:

16 QUESTIONS BY MR. KISER:

17 Q. Mr. Dahlin, would you state your name, who
18 you are employed by and in what capacity?

19 A. My name is Robert A. Dahlin, II. I'm
20 employed by ERECs, Eastern Division, as a production
21 specialist.

22 Q. And on many previous occasions, have your
23 qualifications as an expert witness on production and

24

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1 operation matters been accepted by the Board?

2 A. Yes.

3 Q. And are you familiar with the application
4 that was filed for this location exception for well number
5 VAD-3804?

6 A. Yes, I am.

7 Q. In the event this location exception is not
8 granted, would you project the estimated loss of reserves?

9 A. Approximately seven hundred million
10 (700,000,000) cubic feet.

11 Q. And what is the total depth of the
12 conventional well under the applicant's plan of development?

13 A. The conventional depth would be fifty-six
14 hundred (5600) feet.

15 Q. And this will be sufficient to penetrate and
16 test the common sources of supply in the subject formations?

17 A. That's correct.

18 Q. And is...are we requesting this location
19 exception cover conventional gas reserves to include the
20 designated formations from surface to total depth drilled?

21 A. Yes.

22 Q. And Mr. Dahlin, in your professional
23 opinion, will the granting of this location exception be in
24

1 the best interest of preventing waste, protection correlative
2 rights, and maximizing the recovery of the gas reserves
3 underlying the unit for VAD-3804?

4 A. Yes, it would.

5 JIM KISER: Nothing further of this witness at this
6 time, Mr. Chairman.

7 MASON BRENT: Does anyone have any questions of this
8 witness?

9 (No audible response.)

10 MASON BRENT: No questions. Do you have anything
11 further?

12 JIM KISER: Mr. Chairman, we'd ask that the petition
13 be approved as submitted.

14 CLYDE KING: I move we accept, Mr. Chairman.

15 BILL HARRIS: Second.

16 MASON BRENT: We have a motion and we have a second.
17 Is there any further discussion?

18 (No audible response.)

19 MASON BRENT: If not, all in favor signify by saying
20 yes.

21 (All members indicate in the affirmative.)

22 MASON BRENT: Opposed?

23 (No audible response.)

24

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1 MASON BRENT: No opposition, the motion is carried.

2 The next item on our agenda, the Board will consider a
3 petition from Equitable Resources Energy Company, Eastern
4 Region, under Section 45.1-361.22 for pooling of a coalbed
5 methane unit identified as VC-3623 located in the Hurricane
6 District, Vansant Quadrangle, Buchanan County, Virginia.
7 This is docket number VGOB-98-04/21-0660. I'd ask all
8 interested parties that want to participate in this hearing
9 to come forward and introduce yourself.

10 JIM KISER: Mr. Chairman and members of the Board,
11 Jim Kiser once again on behalf of Equitable Resources Energy
12 Company. We will have a new witness in this matter and the
13 other matters that follows this on...to testify as far as to
14 land issues. It's Mr. Dennis Baker and we'd ask that he be
15 sworn at this time.

16 (The witness is sworn.)

17 MASON BRENT: Okay. Let the record indicate that
18 there are no other interested parties here today. You may
19 proceed.

20

21 DENNIS R. BAKER

22 having been duly sworn, was examined and testified as
23 follows:

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1 unit involved here?

2 A. Yes, we do.

3 Q. And what is the interest of Equitable in the
4 gas estate?

5 A. Currently 93.10 percent.

6 Q. And what is the interest of Equitable in the
7 coal estate?

8 A. The same interest, 93.10 percent.

9 Q. Are all the unleased parties set out in
10 Exhibit B to the application?

11 A. Yes.

12 Q. Subsequent to the filing your application,
13 have you continued to attempt to reach an agreement with the
14 unleased respondents listed in Exhibit B?

15 A. Yes, we have.

16 Q. As a result of these efforts, have you been
17 able to obtain any additional leases?

18 A. No.

19 Q. So, at this time could you state the
20 unleased interest within the unit for both the gas estate and
21 the coal estate?

22 A. At present, the unleased interest in the gas
23 estate is 6.90 percent. The unleased portion of the coal
24

1 estate at current is 6.90 percent.

2 Q. And Mr. Baker, were efforts made to
3 determine if the individual respondents were living or
4 deceased or their whereabouts, and if deceased, were efforts
5 made to determine the names and addresses and whereabouts of
6 the successors to any deceased individual respondent?

7 A. Yes.

8 Q. And were reasonable and diligent efforts
9 made and sources checked to identify and locate any unknown
10 heirs, including primary sources such as deed records,
11 probate records, assessor's records, treasurer's records, and
12 secondary sources such as telephone directories, city
13 directories, family and friends?

14 A. Yes.

15 Q. And in your professional opinion, was due
16 diligence exercised to locate each of the respondents named
17 in the Exhibit B?

18 A. Yes, it was.

19 Q. Are the addresses set out in Exhibit B to
20 the application, the last known addresses for the
21 respondents?

22 A. Yes.

23 Q. Are you requesting this Board to force pool
24

1 all unleased interests listed in Exhibit B?

2 A. Yes, we are.

3 Q. Does Equitable seek to force pool the
4 drilling rights of each individual respondent if living and
5 if deceased, the unknown successor or successors to any
6 deceased individual respondent?

7 A. Yes, we are.

8 Q. And is Equitable seeking to force pool the
9 drilling rights of the person designated as Trustee if acting
10 in such capacity, and if not acting in such capacity, is
11 Equitable seeking to force pool the drilling rights of the
12 successor of such Trustee?

13 A. Yes.

14 Q. And are you familiar with the fair market
15 value of drilling rights in the unit involved here and in the
16 surrounding area?

17 A. Yes, I am.

18 Q. Could you advise the Board as to what those
19 are?

20 A. Yes, a five (5) dollar per acre
21 consideration, for a five year term, one-eighth of eight-
22 eighth royalty.

23 Q. And did you gain your familiarity with
24

1 these...with these fair market values by acquiring oil and
2 gas leases, coalbed methane leases and other agreements
3 involving the transfer of drilling rights in the unit
4 involved here and in the surrounding area?

5 A. Yes, I did.

6 Q. In your professional opinion, do the terms
7 you have testified to represent the fair market value of and
8 the fair and reasonable compensation to be paid for drilling
9 rights within this unit?

10 A. Yes.

11 Q. And based on your testimony and as to those
12 respondents in Exhibit B who have not voluntarily agreed to
13 lease, do you recommend that they be allowed the following
14 options with respect to their ownership interest within the
15 unit: One, participation; two, a cash bonus of five (5)
16 dollars per net mineral acre plus a one-eighth of eight-
17 eights royalty; three, in lieu of such cash bonus one-eighth
18 of eight-eights royalty, share in the operation of the well
19 on a carried bases as a carried operator on the following
20 conditions: Such carried operators should be entitled to the
21 share of production from the tracts pooled accruing to his
22 interest exclusive of any royalty, overriding royalty
23 reserved in any leases, assignments thereof or agreements

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1 relating thereto of such tracts, but only after the proceeds
2 applicable to his share equal - (A) 300 percent of the share
3 of such cost applicable to the interest of the carried
4 operator of a leased tract or portion thereof; or (B) 200
5 percent of the share of such cost applicable to the interest
6 of the carried operator of an unleased tract or portion
7 thereof?

8 A. Yes.

9 Q. Do you recommend that any Board order
10 provide that election by respondents be in writing and sent
11 to the applicant at Equitable Resources Energy Company,
12 Eastern Region, P. O. Box 1983, Kingsport, Tennessee,
13 Attention: Dennis R. Baker?

14 A. Yes.

15 Q. And should this be the address for all
16 communications with the applicant concerning any forced
17 pooling order?

18 A. Yes.

19 Q. Do you recommend that the order provide that
20 if no written elections properly made by a respondent, then
21 such respondent shall be deemed or elected to cash royalty
22 option in lieu of participation?

23 A. Yes.

24

--

1 Q. Should the unleased respondents be given
2 thirty days from the date of the recording of the Board
3 order to file written elections?

4 A. Yes.

5 Q. If an unleased respondent elects to
6 participate, should they be given forty-five days to pay the
7 applicant for the respondent's proportionate share of well
8 costs?

9 A. Yes.

10 Q. Does the applicant expect the party electing
11 to participate to pay in advance that party's share of
12 completed well costs?

13 A. Yes.

14 Q. Should the applicant be allowed a hundred
15 and twenty days filing and recording of the Board order and
16 thereafter annually on that date until production is achieved
17 to pay or tender any cash bonus becoming due under the order?

18 A. Yes.

19 Q. Do you recommend that the order provide that
20 if the respondent elects to participate, but fails to pay
21 their proportionate share of well costs satisfactory to the
22 applicant for payment of well costs, the respondent's
23 election to participant should be treated as having been

24

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1 withdrawn and void and such respondent should be treated just
2 as if no initial election had been filed under the order?

3 A. Yes.

4 Q. Do you recommend the order provide that
5 where a respondent elects to participate, but defaults in
6 regard to the payment of well costs, any cash sum becoming
7 payable to such respondent be paid within sixty days after
8 the last date in which such respondent could have been paid
9 or made satisfactory arrangements for the payment of the well
10 costs?

11 A. Yes.

12 Q. Do you recommend that the pooling order
13 provide that if a respondent...excuse me...if there's a title
14 defect in respondent's interest or in any event of
15 conflicting claims to the coalbed methane, that the operator
16 pay into an escrow account created by this Board into which
17 all costs or proceeds attributable to the conflicting
18 interest which shall be held for the respondent's benefit
19 until such funds can be paid to the party either by order of
20 this Board or until the title defect or conflicting claim is
21 resolved to the operator's satisfaction?

22 A. Yes.

23 Q. And Mr. Baker, who should be named the
24

1 operator under the force pooling order?

2 A. Equitable Resources Energy Company.

3 JIM KISER: No further questions of this witness at
4 this time, Mr. Chairman.

5 MASON BRENT: Does the Board have any questions of
6 this witness?

7 SANDRA RIGGS: There's no escrows related to this
8 particular drilling unit, will there be?

9 DENNIS R. BAKER: I don't believe so, no.

10 SANDRA RIGGS: It's all fee?

11 DENNIS R. BAKER: Uh-huh.

12 JIM KISER: There's no conflicting claimants.

13 DENNIS R. BAKER: No.

14 SANDRA RIGGS: Right.

15 MASON BRENT: Any other questions?

16 (No audible response.)

17 MASON BRENT: Okay, you may continue.

18

19 ROBERT A. DAHLIN, II

20 having been duly sworn, was examined and testified as
21 follows:

22 QUESTIONS BY MR. KISER:

23 Q. Mr. Dahlin, could you again state your name

24

--

1 for the Board and who you are employed by and in what
2 capacity?

3 A. My name is Robert A. Dahlin, II. I'm
4 employed by Equitable Resources Energy Company as a
5 production specialist.

6 Q. And your responsibilities include the land
7 involved here and in surrounding area?

8 A. That's correct.

9 Q. And you're familiar with the proposed
10 exploration and development of the unit involved here under
11 the plan of development?

12 A. Yes.

13 Q. What's the total depth of the well under the
14 applicant's plan of development?

15 A. Two thousand two hundred and thirty-four
16 (2,234) feet.

17 Q. And this will be sufficient to penetrate and
18 test the common sources as supplied in the subjected
19 formations?

20 A. Yes.

21 Q. And what are the estimated reserves of the
22 unit?

23 A Three hundred million (300,000,000) cubic feet.

24

--

1 Q. And are you familiar with the well costs for the well under the
2 applicant's plan of development?

3 A. Yes, I am.

4 Q. Has AFE been reviewed, signed and submitted to the Board with
5 the application?

6 A. Yes.

7 Q. Was this AFE prepared by an engineering department
8 knowledgeable in the preparation of AFEs and knowledgeable in regard to well costs in this
9 area?

10 A. Yes, it was.

11 Q. Does this AFE represent a reasonable estimate of well costs for
12 the proposed well under the plan of development?

13 A. Yes.

14 Q. At this time, could you state both the dry hole costs and
15 completed well costs for the Board?

16 A. The dry hole costs are one hundred eighteen thousand four
17 hundred and eighty-two dollars (\$118,482), with the completed well cost of two hundred
18 and seventeen thousand and six hundred dollars (\$217,600).

19 Q. And do these costs anticipate a multiple completion?

20 A. Yes.

21 Q. And does AFE include a reasonable charge for supervision?

22 A. Yes.

23 Q. Mr. Dahlin, in your professional opinion, will the granting of this
24

1 application be in the best interest of conservation, prevention of waste and protection of
2 correlative rights?

3 A. Yes.

4 JIM KISER: Nothing further of this witness at this time, Mr. Chairman.

5 MASON BRENT: Any questions from the Board of this witness?

6 (No audible response.)

7 MASON BRENT: No questions. Go ahead.

8 JIM KISER: We'd ask that the application be approved as submitted.

9 MASON BRENT: Do we have a motion?

10 BILL HARRIS: Mr. Chairman, I move we approve the application as
11 submitted.

12 CLYDE KING: Second.

13 MASON BRENT: Okay. We have a motion and second. Any further
14 discussion?

15 (No audible response.)

16 MASON BRENT: If not, all if favor signify by saying yes.

17 (All members indicate in the affirmative.)

18 MASON BRENT: Opposed no?

19 (No audible response.)

20 MASON BRENT: Motion is carried.

21 JIM KISER: Thank you.

22 MASON BRENT: The next item on the agenda, the
23 Board will consider a petition from Equitable Resources
24

1 Energy Company, Eastern Region, under Section 45.1-361.22 for
2 pooling of coalbed methane unit identified as VC-3637,
3 located in the Hurricane District, Prater Quadrangle...I hope
4 I pronounced that correctly, Buchanan County, Virginia. This
5 is docket number VGOB-98-04/21-0661. I'd ask that all
6 interested parties that want to participate in this hearing
7 to come forward at this time and introduce yourselves.

8 JIM KISER: Mr. Chairman and members of the Board,
9 Jim Kiser again on behalf of Equitable Resources Energy
10 Company. Our witnesses in this matter will once again be Mr.
11 Baker and Mr. Dahlin.

12 DENNIS R. BAKER
13 having been duly sworn, was examined and testified as
14 follows:

15 QUESTIONS BY MR. KISER:

16 Q. Mr. Baker, could you state who you are
17 employed and in what capacity?

18 A. Yes. I'm employed by Equitable Resources
19 Energy Company as Senior Landman.

20 Q. And are you're familiar with Equitable's
21 application for a pooling order for Equitable well number VC-
22 3637, dated March 18th, 1998?

23 A. Yes, I am.

24

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1 Q. Is Equitable seeking to force pool the
2 drilling rights underlying the unit as depicted at Exhibit A?
3 A. Yes.
4 Q. And does this location fall within the
5 Board's order for the Nora coalbed gas field?
6 A. Yes, it does.
7 Q. And prior to the filing of the application,
8 were efforts made to contact each of the respondents in an
9 attempt to work out an agreement regarding the development of
10 the unit involved made?
11 A. Yes.
12 Q. And does Equitable own drilling rights in
13 the unit?
14 A. Yes, we do.
15 Q. What is the interest of Equitable in the gas
16 estate?
17 A. The interest currently in the gas estate is
18 99.09 percent leased.
19 Q. And the interest of Equitable in the coal
20 estate?
21 A. 99.09 percent leased.
22 Q. And are any unleased parties set out in
23 Exhibit B to the application?

24

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1 A. Yes.

2 Q. And are you familiar with the ownership of
3 drilling rights of parties other than Equitable underlying
4 this unit?

5 A. Yes, I am.

6 Q. And what is the unleased percentage of both
7 the gas estate and the coal estate?

8 A. The unleased portion of the gas estate is
9 .91 percent. The unleased portion of the coal estate is .91
10 percent.

11 Q. And Mr. Baker, were efforts made to
12 determine if individual respondents were living or deceased
13 or their whereabouts and if deceased, were efforts made to
14 determine the names and addresses and whereabouts of the
15 successors to any deceased individual respondents?

16 A. Yes, it was.

17 Q. We don't have any unknown heirs. In your
18 professional opinion, was due diligence exercised to locate
19 each of the respondents named herein?

20 A. Yes, it was.

21 Q. Are the addresses set out in Exhibit B to
22 the application the last known addresses for the respondents?

23 A. Yes.

24

1 Q. And are you requesting this Board to force
2 pool all unleased interest listed in Exhibit B?

3 A. Yes, I am.

4 Q. And are you familiar with the fair market
5 value of drilling rights in this unit and in the surrounding
6 area?

7 A. Yes, I am.

8 Q. Could you again state those for the Board?

9 A. A five (5) dollar per acre consideration,
10 five (5) year term, one-eighth of eight-eighth royalty.

11 Q. In your opinion, do the terms you've
12 testified to represent the fair market value of and the fair
13 and reasonable compensation to be paid for drilling rights
14 within this unit?

15 A. Yes.

16 JIM KISER: Mr. Chairman, at this time, I would ask
17 that the testimony regarding any unleased respondents,
18 election options and their time with which to respond to
19 those various election options that was taken in docket
20 number VGOB-98-04/21-0660 be incorporated in to this hearing.

21 MASON BRENT: Okay. No objections?

22 (No audible response.)

23 MASON BRENT: It's so incorporated.

24

--

1 JIM KISER: Thank you.

2 Q. Mr. Baker, by way of escrow provisions for
3 the Board's order, should there be one, do we have any
4 conflicting claimant situations with this well?

5 A. No, we do not.

6 Q. And who should be named the operator under
7 the force pooling order?

8 A. Equitable Resources Energy Company.

9 JIM KISER: That's all I have of this witness at
10 this time, Mr. Chairman.

11 MASON BRENT: Before I ask questions, I just...for
12 the record, I would like to indicate that there are no other
13 interested parties at this table. Any questions of this
14 witness from the Board?

15 (No audible response.)

16 MASON BRENT: No questions. You may continue.

17

18

19

20 ROBERT A. DAHLIN, II

21 having been duly sworn, was examined and testified as
22 follows:

23 QUESTIONS BY MR. KISER:

24

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1 Q. Mr. Dahlin, you've previously testified
2 before the Board and your qualifications as a expert in
3 production and operations have been accepted?

4 A. That's correct.

5 Q. And your responsibilities include in the
6 land here and in the surrounding area?

7 A. Yes, it does.

8 Q. And what is the total depth of the well for
9 VC-3637?

10 A. Two thousand two hundred and nine (2,209)
11 feet.

12 Q. And what are the estimated reserves?

13 A. Three hundred million (300,000,000) cubic
14 feet.

15 Q. And are you familiar with the well costs for
16 the well under the applicant's plan of development?

17 A. Yes.

18 Q. Have you...has a AFE been reviewed, signed
19 and submitted to the Board?

20 A. Yes.

21 Q. Was this AFE prepared by an engineering
22 department knowledgeable and the preparation of the AFE's and
23 knowledgeable in regard to well costs in this area?

24

1 A. Yes, it was.

2 Q. And in your professional opinion, does this
3 AFE represent a reasonable estimate of the well costs for the
4 well under the applicant's plan of development?

5 A. It does.

6 Q. And could you state for the Board at this
7 the dry hole costs and completed well costs in connection
8 with VC-3637?

9 A. The dry hole costs are eighty-nine thousand
10 four hundred and seventy dollar (\$89,472), with the completed
11 well cost of two hundred and twenty-five thousand seven
12 hundred dollars (\$225,700).

13 Q. Do these costs anticipate a multiple
14 completion?

15 A. Yes.

16 Q. And does your AFE include a reasonable
17 charge for supervision?

18 A. Yes.

19 Q. Mr. Dahlin, in your professional opinion,
20 will the granting of this application be in the best interest
21 of conservation and prevention of waste and the protection of
22 correlative rights?

23 A. Yes, it would.

24

1 JIM KISER: Nothing further of this witness at this
2 time, Mr. Chairman.

3 MASON BRENT: Any questions from the Board?

4 BILL HARRIS: Mr. Chairman, I have just a quick
5 question.

6 MASON BRENT: Mr. Harris.

7 BILL HARRIS: It's informational. Bob, it's about
8 the dry hole costs. I noticed that the depth are about the
9 same for both this and the previous well, but the dry hole
10 for the other was about one fourteen or something...I don't
11 have it in front of me and this was eighty-nine, is there
12 a...is there---?

13 ROBERT A. DAHLIN, II: What...basically what we do
14 is we take the IDC drilling from the first page, the total
15 there, the total for the surface pipe that will be left in
16 the hole in the event that it is plugged. The only other
17 costs are location restoration and that's depending on
18 topography---.

19 BILL HARRIS: Okay. So, that---.

20 ROBERT A. DAHLIN, II: ---and then there's a
21 plugging fee of about thirty-five hundred (3,500) dollars, we
22 anticipate. So, it sites specific as far topgraphy and
23 location restoration.

24

--

1 BILL HARRIS: So, that would probably make the
2 difference?
3 ROBERT A. DAHLIN, II: Yeah. Uh-huh.
4 BILL HARRIS: Yeah, okay. Okay. Thank you.
5 MASON BRENT: Any other questions from the Board?
6 (No audible response.)
7 MASON BRENT: Okay. No other questions.
8 JIM KISER: Mr. Chairman, we'd ask that the
9 application be approved as submitted.
10 MAX LEWIS: I make a motion we approve it.
11 MASON BRENT: We have a motion. Do we have a
12 second?
13 BILL HARRIS: Second.
14 MASON BRENT: The motion has been seconded. Any
15 further discussion, other than local discussion? We have a
16 motion and second. Is there any other discussion?
17 CLYDE KING: Oh, I'm sorry.
18 MASON BRENT: That's all right. That's fine.
19 CLYDE KING: I thought we had voted. Excuse me.
20 MASON BRENT: All in favor signify by saying yes.
21 (All members indicate in the affirmative.)
22 MASON BRENT: Opposed?
23 (No audible response.)
24

1 MASON BRENT: No opposition, the motion is carried.
2 The next item on our agenda the Board will consider a
3 petition from Equitable Resources Energy Company, Eastern
4 Region, under Section 45.1-361.22 for pooling of a coalbed
5 methane unit identified as VC-3758, located in the Kenady
6 District, Nora Quadrangle, Dickenson County, Virginia. This
7 is docket number VGOB-98-04/21-0662. I'd ask all interested
8 parties who want to participate in this hearing to come
9 forward at this time and introduce yourselves.

10 JIM KISER: Mr. Chairman, Jim Kiser on behalf of
11 Equitable Resources Energy Company again. We won't...I'm
12 pleased and proud to announce that we won't need any
13 witnesses in this matter. We are going to withdraw this
14 application because since the time of the filing of the
15 application, we have achieved a voluntary unit. I think
16 there was only one unleased party in the unit, and since the
17 time of the filing of the application, we've obtained that
18 lease. And so, we're pleased to announce that we can
19 withdraw that application.

20 MASON BRENT: It's withdrawn. The next item on our
21 agenda the Board will consider a petition from Equitable
22 Resources Energy Company, Eastern Region, under Section 45.1-
23 361.21 for pooling of a conventional gas unit identified as
24

1 V-3801, located in the Robertson District, Flatgap
2 Quadrangle, Wise County, Virginia. The docket number VGOB-
3 98-04/21-0663. I'd ask all interested parties who would like
4 to participate in this hearing to come forward at this time
5 and introduce yourselves.

6 JIM KISER: Mr. Chairman and members of the Board,
7 Jim Kiser again on behalf of Equitable Resources Energy
8 Company. Our witnesses in this matter will once again be Mr.
9 Baker and Mr. Dahlin.

10 MASON BRENT: Let the record reflect there are no
11 other interested parties here today.

12

13 DENNIS R. BAKER

14 having been duly sworn, was examined and testified as
15 follows:

16 QUESTIONS BY MR. KISER:

17 Q. Mr. Baker, could you again state your name
18 and who you are employed and in what capacity?

19 A. Yes, my name is Dennis R. Baker. I'm
20 employed by Equitable Resources Energy Company as Senior
21 Landman.

22 Q. And your responsibilities include the land
23 involved here and in the surrounding area?

24

--

1 A. Yes, they do.

2 Q. And are you familiar with Equitable's
3 application for the establishment of a drilling unit and
4 seeking a pooling order for Equitable well number V-3801,
5 dated March 19, 1998?

6 A. Yes.

7 Q. And does the proposed unit depicted in
8 Exhibit E...A, include all acreage within in twenty-five
9 hundred (2500) feet, that being a twelve hundred and fifty
10 (1250) foot radius of the proposed well?

11 A. Yes.

12 Q. And prior to the filing of the application,
13 were efforts made to contact each of the respondents listed
14 in Exhibit B in an attempt made to work out an agreement with
15 them regarding a voluntary lease?

16 A. Yes.

17 Q. And what is the interest of Equitable within
18 the unit?

19 A. The interest leased is 84.44 percent.

20 Q. And subsequent to the filing of the
21 application, have you continued to attempt to reach an
22 agreement with any unleased respondents listed in Exhibit B?

23 A. Yes, we have.

24

--

1 Q. And as a result of these efforts, have you
2 been successful in acquiring any additional leases from any
3 of the respondents listed as unleased owners?

4 A. No, we have not.

5 Q. Okay. So, what would the...at this time,
6 what would the unleased percentage of the oil and gas estate
7 within the unit be?

8 A. The unleased interest is 15.56 percent.

9 Q. And are all unleased parties set out at
10 Exhibit B?

11 A. They are.

12 Q. And were efforts made to determine if
13 individual respondents were living or deceased, or their
14 whereabouts and if deceased, were efforts made to determine
15 the names and addresses and whereabouts of the successors to
16 any deceased individual respondent?

17 A. Yes.

18 Q. And were reasonable and diligent efforts
19 made and sources checked to identify and locate any unknown
20 heirs to include primary sources such as deed records,
21 probate records, assessor's records, treasurer's records, and
22 secondary sources such as telephone directories, city
23 directories, family and friends?

24

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1 A. Yes.

2 Q. In your professional opinion, was due
3 diligence exercised to locate each of the respondents named
4 in Exhibit B?

5 A. Yes.

6 Q. And are the addresses set out in Exhibit B
7 to the application the last known addresses for the
8 respondents?

9 A. Yes, it is.

10 Q. And are you requesting this Board to force
11 pool all unleased interest listed in Exhibit B to the
12 application?

13 A. Yes.

14 Q. Does Equitable seek to force pool the
15 drilling rights of each individual respondent if living or
16 deceased, the unknown successor or successors to any deceased
17 respondent?

18 A. Yes.

19 Q. And are you familiar with the fair market
20 value of drilling rights in the unit here and in the
21 surrounding area?

22 A. Yes, I am.

23 Q. Could you advise the Board as to what those
24

1 are?

2 A. A five (5) dollar per acre consideration,
3 five (5) year term, one-eighth of eight-eighths royalty.

4 Q. Did you gain this familiarity by acquiring
5 oil and gas leases and other agreements involving the
6 transfer of drilling rights in the unit involved here and in
7 the surrounding area?

8 A. Yes, I am.

9 Q. And in your professional opinion, do the
10 terms you have testified to represent the fair market value
11 of and the fair and reasonable compensation to be paid for
12 drilling rights within this unit?

13 A. Yes.

14 JIM KISER: Mr. Chairman, at this time, as to the
15 unleased respondent's election options and their times to
16 respond to said options, I would ask that we incorporate the
17 testimony that was previously elicited in VGOB-98-04/21-0660.

18 MASON BRENT: It's so incorporated.

19 Q. Mr. Baker, will we...will this order require
20 escrow provisions? I think we have some unknown heirs, is
21 that correct?

22 A. Yes.

23 Q. So, the Board needs to create an escrow
24

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1 account for the respondent's benefit until those heirs can be
2 located?

3 A. Yes.

4 Q. And who should be named the operator under
5 the force pooling order?

6 A. Equitable Resources Energy Company.

7 JIM KISER: Thank you. No further questions of this
8 at this time, Mr. Chairman.

9 MASON BRENT: I see one of the unleased parties is
10 the Flat Gap Community Cemetery, which is Tract Nineteen?

11 DENNIS R. BAKER: Yes.

12 MASON BRENT: How far is that from the...this
13 proposed well site...the distance?

14 DENNIS R. BAKER: The closest corner looks to be
15 about ...estimated at about five hundred foot. I don't have
16 a scale on me. I can't measure the distance.

17 JIM KISER: Yeah, I'd say that's probably...it's on
18 a one inch to four hundred (400) feet. So, I'd say that's
19 probably about right. Mr. Baker, they say a lawyer should
20 never ask question he don't already know the answer to, but
21 I'm going to take a...go out on a limb here. Are we not in
22 the process of just about acquiring a lease from them?

23 DENNIS R. BAKER: Yes...yes, we are. As of
24

1 yesterday morning there was four trustees to this cemetery
2 and three of those signatures had been acquired.

3 CLYDE KING: You're three quarters there.

4 DENNIS R. BAKER: We're three quarters there.

5 MASON BRENT: Any questions of this witness from
6 the Board?

7 (No audible response.)

8 MASON BRENT: There being no further questions, you
9 may continue.

10

11 ROBERT A. DAHLIN, II

12 having been duly sworn, was examined and testified as
13 follows:

14 QUESTIONS BY MR. KISER:

15 Q. Mr. Dahlin, could you again state your name
16 for the Board and who you're employed by and in what
17 capacity?

18 A. Yes, my name is Robert A. Dahlin, II. I'm
19 employed by Equitable Resources Energy Company and I'm
20 employed as a production specialist.

21 Q. And your qualifications as a expert in
22 production and operations have on many occasions have
23 previously been accepted by the Board?

24

--

1 A. Yes, that's right.

2 Q. And your responsibilities include the land
3 involved here and in the surrounding area?

4 A. That's correct.

5 Q. And you're familiar with the proposed
6 exploration and development of the unit involved here under
7 the applicant's plan of development?

8 Q. And what is the total depth of the well
9 under the plan of development?

10 A. Five thousand one hundred and seventy
11 (5,170) feet.

12 Q. And this will be sufficient to penetrate and
13 test the common sources as supplied in the subject
14 formations?

15 A. Yes.

16 Q. And are we requesting that the force pooling
17 of conventional gas reserves not only to include the
18 designated formations, but any other formations excluding
19 coal formation which maybe between those formations
20 designated from the surface to the total depth drilled?

21 A. That's correct.

22 Q. And what are the estimated reserves of the
23 unit under V-3801?

24

1 A. Five hundred and fifty million (550,000,000)
2 cubic feet.

3 Q. And are you familiar with the well costs for
4 the well under the plan of development?

5 A. Yes.

6 Q. And has a AFE been reviewed, signed and
7 submitted to the Board with the application?

8 A. Yes.

9 Q. Was this AFE prepared by an engineering
10 department knowledgeable in the preparation of the AFE's and
11 knowledgeable in regard to well costs in this area?

12 A. Yes.

13 Q. In your professional opinion, does this AFE
14 represent a reasonable estimate of the well costs for the
15 proposed well under the applicant's plan of development?

16 A. Yes, it does.

17 Q. Could you please list for the Board both the
18 dry hole costs and completed well costs for V-3801?

19 A. The dry hole costs are one hundred and
20 seventy-one thousand dollars (\$171,000) and the completed
21 well cost are three hundred and one thousand two hundred
22 dollars (\$301,200).

23 Q. Do these costs anticipate a multiple
24

1 completion?

2 A. Yes.

3 Q. Does your AFE submitted include a reasonable
4 charge for supervision?

5 A. Yes.

6 Q. Mr. Dahlin, in your professional opinion,
7 will the granting of this application be in the best interest
8 of conservation and prevention of waste and the protection of
9 correlative rights?

10 A. Yes.

11 JIM KISER: Nothing further of this witness at this
12 time, Mr. Chairman.

13 MASON BRENT: Any questions from the Board of this
14 witness?

15 BILL HARRIS: Yes, I do have one---.

16 MASON BRENT: Mr. Harris.

17 BILL HARRIS: ---one question. Informational
18 ...again, this is for you all. I notice the well plat. The
19 elevation determined by GPS and I didn't...what...I guess, I
20 know what that is but I didn't realize we were doing that
21 with GPS. Is this new or has this been something that's been
22 ongoing for some time or what?

23 ROBERT A. DAHLIN, II: I can only partially answer

24

--

1 that. I do know we are using Global Positioning for probably
2 a year.

3 BILL HARRIS: Uh-huh.

4 ROBERT A. DAHLIN, II: But I...my experience about
5 the exact, you know, nature of the surveyor's application of
6 that...

7 BILL HARRIS: Yeah, I just wondered how accurate
8 that was because, you know, when you...if you have the hand
9 held units people talk about within fifty (50) feet or
10 something plus or minus and just wondered if that were
11 accurate enough to locate the elevation.

12 ROBERT A. DAHLIN, II: I would say that would come
13 under the authority of the license land surveyor and his, you
14 know, satisfying the regulations under the permitting
15 statutes and I personally am not familiar with that
16 department.

17 BILL HARRIS: Okay. Tom, do you know?

18 TOM FULMER: Well, the GPS and the GPS units...who
19 is that...who is that?

20 BILL HARRIS: This is---.

21 ROBERT A. DAHLIN, II: Glen Phillips.

22 BILL HARRIS: ---Glen Phillips.

23 TOM FULMER: Glen...Glen has got a high percentage.

24

--

1 I think he's up within three meters.

2 BILL HARRIS: Okay.

3 TOM FULMER: Most of your...as long as they comply
4 with state plan coordinate system, then they're fine.
5 However, how they ever do their surveys is different because
6 they are attesting to the accuracy of it.

7 BILL HARRIS: Uh-huh.

8 TOM FULMER: So, if anything, if it should not be
9 accurate, then you can go back on him. He as engineer signs
10 it.

11 BILL HARRIS: Yeah, okay.

12 JIM KISER: He certifies the well plan.

13 BILL HARRIS: Okay. But I was just curious about
14 the GPS because I knew that was in use now and a lot of
15 things use that. But I didn't about the accuracy and whether
16 or not...I was just...and we may have had that before and I
17 just hadn't seen it. But---.

18 ROBERT A. DAHLIN, II: There have been others.

19 BILL HARRIS: Yeah, okay.

20 TOM FULMER: More and more going to GPS...we have
21 two units of our own. So---.

22 BILL HARRIS: Uh-huh.

23 TOM FULMER: That we use to check out on wells and
24

1 do surveyors and things.

2 BILL HARRIS: Okay. Thank you.

3 MASON BRENT: Any other questions of this witness?

4 (No audible response.)

5 MASON BRENT: No questions.

6 JIM KISER: Mr. Chairman, we'd ask that the

7 application be approved as submitted.

8 MAX LEWIS: I make a motion to approve it as

9 presented.

10 MASON BRENT: We have a motion to approve. Do we

11 have a second?

12 CLYDE KING: Second.

13 MASON BRENT: Any further discussion?

14 (No audible response.)

15 MASON BRENT: There being no further discussion.

16 All in favor signify for approving the motion signify by

17 saying yes.

18 (All members indicate in the affirmative.)

19 MASON BRENT: Opposed?

20 (No audible response.)

21 MASON BRENT: No opposition, the motion is carried.

22 The next and final item on our agenda, the Board will

23 consider a petition from Equitable Resources Energy, Eastern

24

1 Region, under Section 45.1-361.21 for pooling of a
2 conventional gas unit identified as V-3808 located in the
3 Lipps District, Coeburn Quadrangle, Wise County, Virginia.
4 This is docket number VGOB-98-04/21-0664. I'd ask all
5 interested that would like to testify before the Board on
6 this hearing to please come forward at this time and
7 introduce yourselves.

8 JIM KISER: Mr. Chairman and members of the Board,
9 Jim Kiser once again on behalf of Equitable Resources Energy
10 Company, we received a notification from Mr. Wampler
11 approximately two weeks apparently that one of the unleased
12 respondents had a accident and had requested continuance of
13 this matter until May.

14 TOM FULMER: That's true. All of these---.

15 MASON BRENT: Mr. Fulmer.

16 TOM FULMER: ---I had forgotten about that one.
17 That one...that one was continued by Mr. Wampler.

18 MASON BRENT: It has been continued.

19 JIM KISER: I've got a copy of the letter if you
20 need that.

21 MASON BRENT: I've got a copy of it right here.

22 TOM FULMER: There should be a copy.

23 CLYDE KING: Yeah, there's a copy in the file.

24

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1 TOM FULMER: It was on behalf of her son who...I
2 mean, for a lady on behalf of her son asked for a
3 continuance.

4 MASON BRENT: Well, that's all of the items on our
5 agenda. Is there any other business to come before the Board
6 before we adjourn?

7 CLYDE KING: Mr. Chairman, I'd like to...we talked
8 earlier about our meeting in May would be on...I think...I'm
9 looking at my calendar on the 19th. I'd just like---.

10 MASON BRENT: Let's ask Mr. Fulmer about it.

11 SANDRA RIGGS: The third Tuesday, whatever that's
12 on.

13 MASON BRENT: Whatever the third Tuesday is.

14 JIM KISER: The 19th would be right.

15 CLYDE KING: Right. I would just like to state, I
16 can not be available for that one, but I am available for the
17 next week if you happen to run into that problem.

18 MASON BRENT: Well, I'm sure Mr. Fulmer's office
19 will poll everyone to see if we will have a quorum.

20 TOM FULMER: Call Mr. Wampler---.

21 CLYDE KING: Yeah.

22 TOM FULMER: ---and you can tell him of that
23 situation. Would that work out for the person here or would
24

1 that create another obstacle?

2 BILL HARRIS: I don't have my calendar with me.

3 CLYDE KING: If it interferes with anyone else

4 I'm...that's fine for me. The 26th is the next one. It's

5 the day after Labor...I mean, the day after---.

6 BILL HARRIS: Memorial.

7 CLYDE KING: Memorial day.

8 JIM KISER: You haven't published anything yet on

9 the May docket?

10 TOM FULMER: No.

11 SANDRA RIGGS: I don't think so.

12 JIM KISER: You probably won't till the end of the

13 month. You got...what...you do it twenty before.

14 TOM FULMER: Twenty.

15 JIM KISER: Mr. King, I know you had talked to

16 myself and Mr. Mason about this, once again, I'm not trying

17 to overstep my bounds, but this is a reoccurring problem for

18 you, I think, isn't it...every other month that happens to

19 you, right? So---.

20 CLYDE KING: Yeah, it is a problem. But I just

21 like...I hate to see the Board miss a meeting because I can't

22 be here, I just can't make it.

23 MASON BRENT: Well, I'll be glad to suggest to Mr.

24

1 Wampler that we take a poll as to who will be here and if
2 there appears to be a problem---.

3 CLYDE KING: I certainly don't want to interfere
4 with anybody else's plans, but if it's possible.

5 TOM FULMER: I think on the part of our...our part
6 all we want to do is make sure we comply with the notice.

7 MASON BRENT: Right.

8 BILL HARRIS: With the notice, yeah.

9 TOM FULMER: And the filing of petition.

10 JIM KISER: Yeah, it's always...you can always move
11 it back. It's moving it forward that presents a problem.
12 I've got one question. The items that...we snuck out for
13 lunch earlier...the items that---.

14 DENNIS R. BAKER: Off the record.

15 JIM KISER: Off the record. Did Mr. Swartz continue
16 today? Were they continued to May or June?

17 MASON BRENT: Continued to May, I believe.

18 SANDRA RIGGS: He just asked for a continuance,
19 which normally would flip it to the docket.

20 JIM KISER: He just asked for...automatically.

21 TOM FULMER: Until May. It was six items that he
22 had moved forward that he was negotiating with somebody.

23 CLYDE KING: Right.

24

--

1 JIM KISER: Oh, okay. I was just wondering because
2 I know when you continue an item, it comes up first on the
3 docket. I'm just wondering where we will be the next one.
4 TOM FULMER: We have with the...with the last one, I
5 think there is supposed to be fourteen...fourteen items.
6 JIM KISER: With all of the continuances?
7 CLYDE KING: On the next month?
8 TOM FULMER: Depending on what you all are going to
9 submit.
10 JIM KISER: Oh, the deadline has already passed. It
11 was Friday.
12 TOM FULMER: Well, how many did you all submit?
13 JIM KISER: We submitted three new ones.
14 TOM FULMER: Three new ones. So---.
15 CLYDE KING: Four.
16 JIM KISER: And then we've got the one continuance.
17 TOM FULMER: ---it will be four...will be
18 seventeen.
19 MAX LEWIS: You've got eight continued.
20 SANDRA RIGGS: Seventeen docket items.
21 TOM FULMER: Seventeen all together.
22 SANDRA RIGGS: Plus or minus.
23 TOM FULMER: Somewhere in that range.

24

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1 JIM KISER: Thank you much.

2 MASON BRENT: Anything else to come before the
3 Board?

4 (No audible response.)

5 MASON BRENT: All right. We're adjourned.

9 STATE OF VIRGINIA,
10 COUNTY OF BUCHANAN, to-wit:

11 I, SONYA MICHELLE BROWN, Court Reporter and Notary
12 Public for the State of Virginia, do hereby certify that the
13 foregoing hearing was recorded by me on a tape recording
14 machine and later transcribed under my supervision.

15 Given under my hand and seal on this the 13th day
16 of May, 1998.

17 NOTARY PUBLIC

18
My commission expires August 31, 2001